

Compliance with the Principles of Legal Security and Reciprocity in the Application of the Provisions Relating to International Judicial Cooperation in Criminal Matters

Professor Phd. Habil. **Anca-Lelia LORINCZ**¹

Abstract

Starting from two jurisprudential solutions (one of the Constitutional Court of Romania and another of the Court of Justice of the European Union), the present study addresses some aspects related to the implementation of some provisions that regulate international judicial cooperation in criminal matters. The paper brings to attention the need to ensure the predictability of internal provisions in the field of international judicial cooperation in criminal matters, from the perspective of meeting the requirement of legality, as an expression of legal security. Also, the study brings into discussion the concepts of reciprocity and loyal cooperation of states regarding the application of community provisions in this field. The research methods used are: documentation, observation, scientific analysis and interpretation of both legal provisions and national and community judicial practice solutions. Finally, the importance of respecting both the principle of legal security and the principle of mutual trust in the context of cross-border judicial cooperation, in order to combat the criminal phenomenon at the European and international level, is emphasized.

Keywords: predictability of the law; mutual trust and loyal cooperation; extradition; European arrest warrant; deprivation of liberty.

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1. Introduction

Subsumed under the theme of cross-border cooperation, in the component (side) of international judicial cooperation, the present study addresses some aspects related to the application of some provisions that regulate the European arrest warrant procedure and the extradition procedure, as forms of international cooperation in criminal matters, through the prism the jurisprudence of the Court of Justice of the European Union and the Constitutional Court of Romania, bringing into discussion the concepts of reciprocity and loyal cooperation between states in the fight against

¹ Anca-Lelia Lorincz - "Dunărea de Jos" University from Galați, Romania, ORCID No.: 0000-0002-2297-0652, lelia.lorincz@gmail.com.

the criminal phenomenon, as well as the concept of predictability of the law, from the perspective of meeting the requirement of legality, as an expression of legal security.

Compared to the multitude of existing doctrinal works in the field of international judicial cooperation in criminal matters, this study brings, as a novelty, an approach from the perspective of recent jurisprudential solutions (pronounced in 2022, respectively 2024), as well as recent legislative amendments (from 2022) operated on the relevant legislation in Romania.

Using, as research methods, observation, documentation, interpretation and scientific analysis of national and community legal provisions, as well as some domestic and community jurisprudential solutions, the paper aims to highlight the importance of respecting the principles of legal security and reciprocity in the field of international judicial cooperation in criminal matter, not only at the declarative level, but also in the concrete activities of implementing the regulations in this field.

The study is structured in three sections (not including the introductory part and that of the conclusions). The first section presents some general considerations in relation to the principle of legal security, as outlined in the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union, as well as the principle of mutual trust between states in the context of judicial cooperation between them, a principle that is also a creation of community jurisprudence (judgments of the Court of Justice of the European Union).

In the following section, a decision of the Constitutional Court of Romania, from 2022, which found the unconstitutionality of some internal provisions in the field of international judicial cooperation in criminal matters, is analyzed, under the aspect of the requirement of predictability of the law, as an expression of the principle of legal security, in relation to the duration of the deprivation of liberty with a view to extradition, in the framework of the passive extradition procedure (when Romania is the requested state).

The penultimate section is dedicated to the analysis of a 2024 decision of the Court of Justice of the European Union, addressing the issue of the refusal to execute a European arrest warrant by the authorities of the requested state, from the perspective of the principles of mutual trust and loyal cooperation of states in the matter of international judicial cooperation.

The final section, of the conclusions, emphasizes the importance of understanding the principle of mutual trust, as well as the importance of the application of this principle by the judicial authorities involved in the procedures for the surrender of a person requested on the basis of a European arrest warrant, the refusal to execute such a warrant representing the exception, only in situations thoroughly justified by the existence of a concrete risk of violation of the fundamental rights of the person concerned.

2. The principle of legal security and the principle of mutual trust in the context of international judicial cooperation in criminal matters

As ruled by the European Court of Human Rights (ECtHR) in the *Case of*

Khlaifia and others v. Italy (Judgment of December 15, 2016)², in relation to the guarantee of the fundamental right to freedom, compliance with the general principle of legal security implies that, in domestic law, the conditions of deprivation of liberty are clearly defined and the domestic law is predictable, so as to meet the criterion of legality established by the Convention for the Protection of Human Rights and Fundamental Freedoms.

Also, invoking ECtHR jurisprudence, the Constitutional Court of Romania has shown, in the content of several decisions³, that, in order to ensure compliance with laws, they must meet certain qualitative requirements, including predictability, which requires that the normative act be sufficiently clear and formulated with a precision that allows its application. Legal provisions must be unambiguous and establish predictable and accessible rules that regulate in a unitary manner, setting minimum requirements applicable to all addressees.

From this perspective, ECtHR jurisprudence outlined a principle, which is not expressly regulated in domestic law, but is essential for the realization of Convention law and Community law: the principle of legal security. And in the *Brumărescu Case against Romania* (Judgment of October 28, 1999)⁴, the Strasbourg court held that "one of the fundamental elements of the preeminence of law is the principle of the security of legal relationships", which assumes, among other requirements, that "the solution given definitively by the courts of a dispute not to be brought back into question".

At the same time, the Court of Justice of the European Union (CJEU) ruled that the principle of legal security is part of the European legal order and must be respected, equally, by the community institutions and the Member States, when they exercise their prerogatives conferred by community directives⁵.

In the doctrine⁶, the principle of legal security has been equated to the "conviction of litigants" that the application of legal norms in a case brought to trial is predictable, the legal provision incident to the respective case being brought to the attention of the addressees and accessible to them, so that the interested persons have the certainty that apply the legal provisions corresponding to that case.

Extrapolating the principle of legal security to the field of international relations, it can be said that globalization and the evolution of international

² ECtHR Judgment of 15 December 2016, document available online at <https://www.csm1909.ro/PageDetails.aspx?Type=Title&FolderId=4810>, accessed on 01.11.2024.

³ Decision of the Constitutional Court no. 717/2015 (published in the Official Gazette of Romania no. 216 of March 23, 2016), Constitutional Court Decision no. 1/2014 (published in the Official Gazette of Romania no. 123 of February 19, 2014), Constitutional Court Decision no. 447/2013 (published in the Official Gazette of Romania no. 674 of November 1, 2013) and so on.

⁴ ECtHR Judgment of 28 October 1999, published in the Official Gazette of Romania no. 414 of August 31, 2000.

⁵ CJEU Judgment of 3 December 1998, Case C-381/97, Belgocodex SA, EU:C:1998:589, point 26, document available online at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61997CJ0381>, accessed on 01.11.2024.

⁶ Emilian Ciongaru, "Principiul securității juridice în jurisprudența Curții Constituționale [The principle of legal security in the jurisprudence of the Constitutional Court]," *Universul Juridic Premium* no. 8 (2021), available online at <https://www.universuljuridic.ro/principiul-securitatii-juridice-in-jurisprudenta-curtii-constitutionale/>, accessed on 03.11.2024.

cooperation towards a more transnational dimension leads to the need for a regulation of cross-border aspects through norms, rules and standards accepted by all the subjects addressed⁷ and accessible to them.

The accessibility of the legal norms that regulate the various forms of international judicial cooperation in criminal matters (such as extradition, the European arrest warrant, the transfer of criminal proceedings, etc.) also implies a standardization of the meaning that national legislations give to the legal concepts used in this field. In this sense, recent doctrine⁸ highlighted the importance of being aware of the specifics of legal language from the perspective of its translation, so as to ensure a uniform interpretation and application of community provisions.

Another established principle in the field of international judicial cooperation in criminal matters is that of reciprocity. Thus, as is known, at the meeting of the European Council in Tampere (October 15-16, 1999), the Member States reiterated their commitment to establish as the main objective of a political nature the development of the European Union as an area of freedom, security and justice, realizing at the same time, the fact that the progressive elimination of border control within the Union will also facilitate the increase of cross-border crime. That's why, in order to respond to the challenge represented by the proliferation of crime at the international level, it was envisaged to optimize the mechanisms of judicial cooperation through the development of instruments based on the principle of mutual recognition. Therefore, among the conclusions of this meeting was the adoption of the principle of mutual recognition, as "a cornerstone of judicial cooperation in the European Union, both in civil and criminal matters", applicable "both for court decisions and for other decisions of the judicial authorities".

Mutual recognition was conceived as that process by which a decision taken by a judicial authority in a Member State of the European Union is recognized and, when appropriate, enforced by other Member States, thus helping to overcome the difficulties that can arise due to the diversity of judicial systems in these states⁹.

Through the Treaty of Lisbon (signed on December 12, 2007 and entered into force on December 1, 2009), in order to make the Union more efficient, several changes were made, including in the field of judicial cooperation in criminal matters, by strengthening the principle of mutual recognition. It was established, thus, that the European Parliament and the Council, in order to facilitate police and judicial cooperation with a cross-border dimension in criminal matters, can decide through directives to establish minimum rules regarding: the mutual admissibility of evidence,

⁷ See, in this sense, Alberto Oddenino and Diego Bonetto, "The Issue of Immunity of Private Actors Exercising Public Authority and the New Paradigm of International Law," *Global Jurist* 20, no. 3 (2020): 2, <https://doi.org/10.1515/gj-2019-0064>.

⁸ Elena Ioriatti, "Comparative Law and EU Legal Language: Towards a European Restatement?" *Global Jurist* 21, no. 2 (2021): 305-40, <https://doi.org/10.1515/gj-2020-0070>.

⁹ Judith Hester, Michael Klackl and Mariana Zainea, *Recunoașterea reciprocă în domeniul cooperării judiciare în materie penală: Instrumente juridice și implementarea lor – Manual [Mutual recognition in the field of judicial cooperation in criminal matters: Legal instruments and their implementation – Handbook]* (Euro Standard Publishing House Bucharest, 2010), 13.

the rights of individuals in criminal proceedings and the rights of crime victims¹⁰.

On the other hand, in addition to these minimum standards established at the level of the European Union, in order to implement the provisions regulating the various forms of judicial cooperation in criminal matters, the interpretation of these provisions must be based on mutual trust in the internal rules and national criminal justice systems, as a corollary of the principle of mutual recognition¹¹.

Although the principle of mutual trust is not expressly provided for and defined in the primary legislation of the European Union¹², the jurisprudence of the CJEU raised the concept of "mutual trust" to the rank of principle, the Court being assisted in this regard also by the national courts in the procedure of requests for decisions preliminary, context in which some of these courts requested answers regarding the effects and limits of mutual trust¹³. For example, in a recent ruling¹⁴, the CJEU held that the principle of mutual trust requires, in order to achieve the area of freedom, security and justice, that each of the Member States consider, except in exceptional circumstances, that all other Member States respect Union law and the fundamental rights recognized by it.

3. Duration of deprivation of liberty with a view to extradition. The consequences of the Constitutional Court Decision no. 359/2022

Regarding the principle of legal security, from the perspective of fulfilling the requirement of predictability and clarity of the law, the Decision of the Constitutional Court of Romania no. 359/2022¹⁵, by which the unconstitutionality of some provisions of the internal special law on international judicial cooperation in criminal matters was found¹⁶.

In this case, the Constitutional Court of Romania was notified of the

¹⁰ Ibid., 22.

¹¹ Anca-Lelia Lorincz and Adriana Iuliana Stancu, "Qualification of the request to take over criminal procedure in the context of international judicial cooperation," in *Proceedings of 9th SWS International Scientific Conference on Social Sciences - ISCSS 2022*, ed. Iryna Zinkiv and Ojars Sparitis (SWS Scholarly Society, 2022), 122, <http://dx.doi.org/10.35603/sws.iscss.2022/s02.015>.

¹² For example, in the Treaty on the European Union (TEU, published in the Official Journal of the EU no. C 202 of July 7, 2016) the principle of loyal cooperation is enshrined [art. 4 para. (3) first paragraph], but not that of mutual "trust", although reference is made to mutual respect and help: "On the basis of the principle of loyal cooperation, the Union and the member states respect and help each other in fulfilling the missions arising from the treaties".

¹³ Matteo Bonelli and Mateus Correia de Carvalho, "No Need to Look, Trust Me! Mutual Trust and Distrust in the European Arrest Warrant System," *European Law Open* (2024); 2, <https://doi.org/10.1017/elo.2024.20>.

¹⁴ CJEU Judgment of 31 January 2023, Case C-158/21, Puig Gordi and others, EU:C:2023:57, point 93, document available online at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=eli%3AECLI%3AEU%3AC%3A2023%3A57>, accessed on 03.11.2024.

¹⁵ Decision of the Constitutional Court no. 359/2022, published in the Official Gazette of Romania no. 964 of October 4, 2022.

¹⁶ Law no. 302/2004 regarding international judicial cooperation in criminal matters, republished in the Official Gazette of Romania no. 411 of May 27, 2019, with subsequent amendments and additions.

unconstitutionality of some provisions¹⁷ of Law no. 302/2004, in relation to the duration of the deprivation of liberty with a view to extradition.

The authors of the exceptions invoked the fact that the criticized legal provisions lack clarity and predictability, leading to the possibility of deprivation of liberty by taking a preventive measure arbitrarily, with the consequence of violating the guarantees of individual freedom provided for in art. 23 of the Romanian Constitution¹⁸.

In justifying its decision, the Romanian constitutional court highlighted, referring to its constant jurisprudence regarding the application of art. 1 para. (5) from the Constitution¹⁹, the importance of ensuring the quality of normative acts, from the perspective of predictability and clarity, as a requirement of the principle of compliance with laws.

Analyzing the exception, under the aspect of invoking the lack of clarity and predictability of the provisions relating to "maintaining the state of provisional arrest with a view to extradition, until the surrender of the extradited person", the Constitutional Court rejected the criticisms formulated, finding that "provisional arrest with a view to extradition" represents a form of deprivation of liberty, but this cannot be included in the category of preventive measures depriving liberty provided by the criminal procedural norms whose application presupposes the existence of a criminal process initiated and carried out according to the common procedure regulated in the Code of Criminal Procedure.

In relation to the meaning of the phrase "provisional arrest with a view to extradition", the constitutional court held that this can be determined by any person who knows the ordinary meaning of the words in the Romanian language vocabulary, if necessary and by resorting to specialized legal advice. Therefore, the provisions criticized by the exception of unconstitutionality raised meet the criterion of "formal predictability"²⁰, i.e. they are designed and expressed in the text of the law in a way that allows the orientation of the conduct of the addressees, the will of the legislator clearly resulting.

Also, regarding the duration of deprivation of liberty in the subsequent stage of the extradition request²¹, the Court considered that, although the legislator did not expressly provide a maximum term, it can be determined by adding up the terms established by the rules that regulate this phase of the extradition procedure. Noting that the purpose of deprivation of liberty, at this stage of the passive extradition

¹⁷ Art. 52 para. (3) and art. 57 para. (5) and (6) of Law no. 302/2004 republished in 2019.

¹⁸ The Romanian Constitution of November 21, 1991, republished in the Official Gazette of Romania no. 767 of October 31, 2003.

¹⁹ Art. 1 para. (5) of the Constitution: "In Romania, compliance with the Constitution, its supremacy and laws are mandatory".

²⁰ For a differentiation between the concepts of "formal predictability" and "substantial predictability", see Constantin Pintilie, "Principiul previzibilității legii în contextul deciziilor Curții Constituționale nr. 297/2018 și nr. 358/2022 [The principle of predictability of the law in the context of the decisions of the Constitutional Court no. 297/2018 and no. 358/2022]," *Forum Juridic* no. 1 (2023): 70, <https://drept.uni-buc.ro/Nr.-1-2023-s1273-ro.htm>.

²¹ Stage regulated in art. 52, 53 and 56 of Law no. 302/2004 republished in 2019.

procedure, is to enforce the decision pronounced on the extradition request, by handing over the extradited person to the requesting state, the Constitutional Court considered that the criticisms of unconstitutionality are not justified under the aspect of the arbitrary character of the detention maintained until the execution of the decision.

Instead, the Court observed that the situation was different with regard to the provisions²² that regulated that stage of the extradition procedure that is triggered as a result of the intervention of a case of force majeure that prevents the surrender/takeover of the extradited person. Since, in such a situation, it was possible to maintain the measure of provisional arrest for an indefinite period, the Court admitted the exception of unconstitutionality of the criticized text in this regard.

In the considerations of Decision no. 359/2022, the constitutional court held that, according to the regulations existing at the time, if the execution of the decision to accept the extradition request, by surrendering/taking over the extradited person, is prevented by a case of force majeure (in the sense of the event foreign to the conduct of the authorities of the requested state or of the requesting state, impossible to foresee and unavoidable), in the absence of a clear and predictable procedure, the application of the custodial measure with a view to extradition, it will be carried out for an unlimited period of time.

Underlining the importance of respecting the general principle of legal security, especially in the case of custodial measures, the Constitutional Court of Romania ruled that an interference with the right to individual freedom ordered for an unlimited period of time violates the principle of proportionality and contravenes constitutional and conventional standards.

Therefore, by the Decision of the Constitutional Court no. 359/2022, the phrase "subject to the case provided for in para. (6)" contained in art. 57 para. (5) from Law no. 302/2004 republished in 2019 and the provisions of art. 57 para. (6) from the same normative act were declared unconstitutional.

It is worth noting that, as a consequence of finding them unconstitutional, the Romanian legislator amended²³ the provisions of art. 57 para. (5) and (6) of Law no. 302/2004 republished in 2019, including by adding express provisions for the case of force majeure that would prevent the surrender or reception of the extradited person, so that the duration of total provisional arrest until the date of surrender is limited in time²⁴.

²² Art. 57 para. (5) and (6) of Law no. 302/2004 republished in 2019, in force at the time of the examination of the exception of unconstitutionality, prior to the amendments made by Law no. 306/2022: "(5) Subject to the case provided for in para. (6), if the extradited person will not be taken over on the set date, he may be set free upon the expiration of a period of 15 days, counted from this date; this term can only be extended by a maximum of 15 more days. (6) In case of force majeure, which prevents the surrender or reception of the extradited person, the Romanian authorities and those of the requesting state shall agree on a new surrender date, the provisions of art. 56 para. (3) being applicable."

²³ By Law no. 306/2022, published in the Official Gazette of Romania no. 1110 of November 17, 2022.

²⁴ According to the current content of art. 57 para. (5) and (6) of Law no. 302/2004 republished in 2019: "(5) If the extradited person will not be taken over on the set date, he can be set free upon the expiration of a period of 15 days, counted from this date; this term can only be extended by a maximum of 15 more

It is noted that the added provisions are similar to those that regulate the taking of the measure of arrest in order to hand over the person requested by a European arrest warrant²⁵, the initial duration of the deprivation of liberty not being able to exceed 30 days, with the possibility of maintaining it for a total duration of at most 180 days²⁶.

4. Refusal to execute the European arrest warrant. Decision of the Court of Justice of the European Union of 29 July 2024

In relation to mutual trust, since, as we showed previously, the Court of Justice of the European Union raised this concept to the rank of principle, we bring to attention a recent decision of the European court in Luxembourg²⁷, pronounced in response to a series of preliminary questions addressed by a court in Romania (Court of Appeal Braşov).

In the case, the request for a preliminary decision, formulated in the framework of the procedure regarding the execution of the European arrest warrant issued by the Braşov Court of Appeal against P.P.R., concerned the interpretation of some articles from the Treaty on the European Union, from the Charter of Fundamental Rights of the European Union and from the Framework Decision 2002/584/JHA of the Council of 13 June 2002 on the European arrest warrant and surrender procedures between Member States.

Given that, on April 29, 2024, P.P.R. (a person definitively sentenced in Romania to serve a prison sentence for acts of corruption) was arrested in Malta on the basis of the European arrest warrant issued against him by the Braşov Court of Appeal, and the person in question pleaded before the Maltese authorities that another Member State (France) refused to execute the same European arrest warrant, the referring court (Braşov Court of Appeal) asked seven preliminary questions, two of them (question no. 5 and question no. 6) with express reference to the principles mutual trust and loyal cooperation.

Thus, questions no. 5 and no. 6 were formulated as follows:

"5) The principle of mutual recognition, provided by Article 1 paragraph (2) of Framework Decision 2002/584, as well as the **principles of mutual trust and**

days. (6) By way of exception to the provisions of para. (5), in case of force majeure, which prevents the surrender or reception of the extradited person, the Romanian authorities and those of the requesting state shall agree on a new date of surrender, without the duration of the total provisional arrest, until the date of surrender, may exceed 180 days."

²⁵ Art. 104 para. (11) from Law no. 302/2004 republished in 2019.

²⁶ For an approach to the issue of the duration of the arrest in order to hand over the person requested in the procedure regarding the execution of the European arrest warrant, see Anca-Lelia Lorincz and Adriana Iuliana Stancu, "Legal nature of the deprivation measure ordered during the procedure for the execution of the European arrest warrant," *Perspectives of Law and Public Administration* 11, no. 3 (2022): 412-13, <https://adjuris.ro/revista/articole/An11nr3/6.%20Lorincz%20Stancu%20EN.pdf>.

²⁷ CJEU Judgment of 29 July 2024, Case C-318/24, PPU (Breian), EU:C:2024:658, document available online at <https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX:62024CJ0318>, accessed on 05.11.2024.

loyal cooperation, provided for in Article 4 paragraph (3) first paragraph of the TEU, combined with the need to ensure an effective jurisdictional protection of the rights of the persons involved in the procedure, all by reference to articles 15 and 19 of the Framework Decision 2002/584, allow the judicial authorities of the issuing Member State [...] to participate directly, by formulating requests, proposals of evidence and in the judicial debates, in the judicial proceedings for the execution of the European arrest warrant, carried out by the executing judicial authority, as well as to exercise the right of appeal against the decision on the refusal of surrender, to the extent and under the conditions in which such a way of appeal is provided in the domestic law of the executing Member State, based on and in compliance with the principle of equivalence? 6) Article 17 paragraph (1) TEU, regarding the powers of the [European] Commission, by reference to Framework Decision 2002/584, [can] be interpreted in the sense that the powers of the Commission regarding the promotion of the general interest of the Union with the taking of appropriate initiatives for this purpose and the attributions regarding ensuring the supervision of the application of Union law can be exercised in the matter of the European arrest warrant and upon referral to the judicial authority issuing the European arrest warrant, if it considers that, by rejecting the execution of the European arrest warrant by the executing judicial authority, are the **principles of mutual trust and loyal cooperation** seriously affected, in order for the Commission to take the measures it deems necessary according to these attributions and in full independence?"

Regarding question no. 5, CJEU found²⁸ that no provision of Framework Decision 2002/584 establishes the direct mandatory participation of the judicial authority issuing the European arrest warrant in the procedure related to the execution of this arrest warrant and that such mandatory participation could not be deduced from the principles of recognition either mutual and loyal cooperation.

At the same time, the Court reiterated the statement that the obligation of loyal cooperation must be the basis of the dialogue between the executing and issuing judicial authorities, as well as the requirement that, in order to ensure effective cooperation in criminal matters, both issuing and issuing judicial authorities enforcement to make full use of the instruments provided for, among others, in Framework Decision 2002/584, so as to favor the mutual trust on which this cooperation is based²⁹.

Regarding question no. 6, the CJEU considered that this is not related to the subject of the litigation, considering it inadmissible as long as the case before the referring court seeks to establish the withdrawal or maintenance of the European arrest warrant issued against P.P.R., with immediate consequences on his state of freedom.

It is, however, of interest that the European court in Luxembourg made references, in the considerations of this judgment, to the principles of mutual trust and loyal cooperation, and in analyzing some of the preliminary questions addressed by the referring court.

²⁸ CJEU Judgment of July 29, 2024, Case C-318/24, PPU (Breian), cited above, point 90.

²⁹ Ibid., points 93 and 94.

Thus, in arguing the answer given to the first question (in relation to the obligation of the enforcement authority of a member state to refuse the execution of a European arrest warrant when the enforcement authority of another member state previously refused the execution of that warrant with the justification of the existence of a risk of violation of the fundamental right to a fair trial), the Court referred to its constant jurisprudence by which it ruled that "both the principle of mutual trust between Member States and the principle of mutual recognition, which itself is based on mutual trust between the latter, are of fundamental importance in Union law, having considering that they allow the creation and maintenance of a space without internal borders".

Also, the European court held that it is required, based on the principle of mutual trust, that in the presence of a decision not to execute a European arrest warrant adopted in a Member State due to the existence of a risk of violation of the right to a fair trial, the enforcement authority of another Member State notified with a new request to surrender the person in question to take into account, appropriately, the reasons taken into account when taking this decision, but within its own examination of the existence of any reason for non-execution, examination on which is bound to achieve it³⁰.

And in the motivation of the answer to the second preliminary question (relating to the possibility of the enforcement authority in a Member State to refuse the execution of the European arrest warrant based on an uncertainty regarding the place of storage of the minutes of taking the oath of the judges of the issuing Member State), the CJEU reiterated the fact that the high degree of trust between Member States, in other words, the principle of mutual trust, on which the mechanism of the European arrest warrant is based, is founded on the premise that the criminal judicial authorities of the issuing state which, after the execution of the European arrest warrant of arrest, is to carry out criminal prosecution, trial or enforcement procedures of a punishment or a custodial security measure, complies with the requirements inherent in the fundamental right to a fair trial³¹.

Therefore, in order to guarantee the full application of the principles of mutual trust and recognition³², it is the responsibility of each Member State to ensure compliance with the requirements of the right to a fair trial; the existence of a real risk that the person against whom a European arrest warrant has been issued will suffer a violation of this fundamental right by the issuing state is likely, in the opinion of the Court, to allow the executing authority, exceptionally, to refuse to execute that warrant.

The European court also notes, however, that the enforcement authority of a Member State must carry out its own examination in two stages, before refusing to hand over the person who is the subject of a European arrest warrant issued for the

³⁰ As can be seen from point 46 of the CJEU Judgment of July 29, 2024, Case C-318/24, PPU (Breian), cited above.

³¹ CJEU Judgment of July 29, 2024, Case C-318/24, PPU (Breian), cited above, point 74.

³² Ibid., point 76.

execution of a sentence³³:

- the first stage involves establishing the existence of objective, concrete and properly updated elements that tend to demonstrate the real risk of violation of the fundamental right to a fair trial in the issuing Member State, "as a result of systemic or generalized deficiencies regarding independence and impartiality the judicial power";

- the second stage involves verifying the extent to which the identified deficiencies have influenced the functioning of the judicial authorities in the issuing Member State, as well as establishing, in relation to the concrete situation of the person who is the subject of the European arrest warrant, the existence of "serious and well-founded reasons to believe that such a risk" of violating the fundamental right to a fair trial "actually materialized in this case".

Analyzing the CJEU Decision of July 29, 2024, we note that, also in the case of the principles of mutual trust and loyal cooperation, there are different ways of interpreting and applying them in concrete terms by some national courts³⁴. However, in order to ensure cross-border cooperation and for the correct application of the provisions on surrender based on a European arrest warrant, the judges of the requested states must have the ability to interpret the law in the fairest possible way³⁵, in the generic sense of the notion of "law".

5. Conclusions

The importance of cross-border international cooperation is also highlighted in Romania's National Strategy for Sustainable Development 2030³⁶, whose last objective (Objective 17: Partnerships for the achievement of objectives) refers to national security and international partnerships³⁷. From this perspective, both Romania and the other states with which it is in a partnership relationship must respect the principles of legal security and reciprocity regarding the application of the provisions in the field of international judicial cooperation, including in criminal matters.

As appreciated in the doctrine³⁸, the European arrest warrant is that

³³ Ibid., point 77.

³⁴ For a development of the problem of different understandings of the same general principle of law, see also Takis Tridimas, "The general principles of EU law and the Europeanisation of national laws," *Review of European Administrative Law* 13, no. 2 (2020): 5-31, <https://doi.org/10.7590/187479820X15930701852193>.

³⁵ In the same sense, for an approach to the issue of equity in judicial activity, see Cristinel Ghigheci, "Legality and Equity in Judicial Activity," *Juridical Tribune – Review of Comparative and International Law* 14, no. 2 (2024): 288, DOI: 10.62768/TBJ/2024/14/2/07.

³⁶ Government Decision no. 877/2018 regarding the adoption of the National Strategy for the sustainable development of Romania 2030, published in the Official Gazette of Romania no. 985 of November 21, 2018.

³⁷ Elena-Ana Iancu, Enache Tuşa, Nicolaie Iancu, Eduard Simion, Adrian-Cristian Moise, "Preventing computer crime by knowing the legal regulations that ensure the protection of computer systems," *Juridical Tribune - Tribuna Juridica* 13, Issue 3 (2023): 364, DOI: 10.24818/TBJ/2023/13/3.03.

³⁸ Nikos Giannopoulos, "Exception to the Rule of Law in the Period of the Crisis. Again, About the Future of the European Arrest Warrant and Protection of the Fundamental Human Rights Between

cooperation mechanism that places the concept of judicial cooperation within the area of freedom, security and justice, regarding which both the European court in Luxembourg and the national courts have encountered difficulties in maintaining an appropriate balance between the principles of mutual recognition and trust, on the one hand, and national constitutional values, such as the protection of fundamental rights, on the other.

The functional connection between the procedure for the enforcement of a form of judicial cooperation by the requested state and the criminal proceedings in the requesting state requires an equivalent protection of human rights in the framework of international cooperation in criminal matters³⁹.

Moreover, the principle of mutual recognition, on which the modern mechanism of the European arrest warrant is founded, is itself based on the mutual trust of the Member States in the capacity of their national legal systems not only to regulate at the declarative level in an equivalent manner, but also to effectively protect the fundamental rights of the person, recognized within the European Union⁴⁰.

Therefore, the mutual trust between the authorities involved in the European arrest warrant procedure requires a restrictive interpretation⁴¹ of the reasons for refusing to execute a European arrest warrant, this refusal representing the exception, only in thoroughly justified situations following a concrete analysis carried out by the enforcement authorities of requested state, in cooperation with the judicial authorities of the requesting state.

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⁴⁰ Oleksandr Shevchuk, Igor Samoshchenko, Svitlana Davydenko, Oleksandra Babaieva, Olena Verhoglyad Gerasymenko, Oleksii Marochkin, "European Arrest Warrant and Protection of Human Rights: Problem Questions of Application in Context Practice of the CJEU," *Pakistan Journal of Life and Social Sciences* 22, no. 2 (2024): 8902, <https://doi.org/10.57239/PJLSS-2024-22.2.00672>.

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