



MINISTERUL JUSTIȚIEI

TRANSFER OF SENTENCED PERSONS . ROMANIA'S EXPERIENCE

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LEGAL FRAMEWORK

- Law no. 302/2004 on international judicial cooperation in criminal matters
- At EU level we apply Framework Decision 2008/909/JHA
- Multilateral Treaties
- Council of Europe Convention on the Transfer of Sentenced Persons, Strasbourg 1983
- Additional Protocol to the Coe TSP , 1997
- UN Conventions-1988 UN Convention, UNTOC, UNCAC
- UNTOC-Art. 17 Ad-hoc agreements-we can use this article as legal background
- Bilateral Treaties: Norway, Kazakhstan, Thailand, Turkey* Republic of Moldova*, Egypt
- International courtesy and assurance of reciprocity
- *For Member States of Council of Europe the multilateral instrument will have preeminence over the bilateral



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A FEW WORDS ABOUT THE DOMESTIC PROCEDURE

- The transfer procedure in Romania is a mixed procedure-administrative and judicial
- The role of MoJ as central authority is rather administrative and consists mainly in facilitating the contact with the Romanian judicial authorities (but more important role in application of Coe 1983 and Bilateral Treaties)
- Also when Romania is the Executing State, the MoJ is competent to receive the documentation/certificate and forward it to the competent judicial authority for assessment.
- The actual transfer decision belongs to the competent judge in case Romania is executing state-from the court of appeal-15 courts of appeal
- Very much decentralized in terms of transfer of sentenced persons performed with other EU Member-States, after MoJ submits the case to the competent Romanian prosecutor, the Romanian Judicial authorities will contact the Sentencing EUMS directly, unless difficulties occur
- In relation with third countries every correspondence goes through the Ministry of Justice



REQUIREMENTS FOR TRANSFER

- Final judgement
- Reminder of the sentence to be served-6 months(exceptions can apply)
- Dual criminality-FD 909 established an exception for a list of offences, RO declared that will continue to verify this requirement for every offences
- Link to the Administering (Executing State)-national or resident-FD 909 exceptions
- Consent of the sentenced person (exceptions- CoE Additional Protocol, FD 909)-consent has three components through-Sentencing State, Administering State, sentenced person
- When the person does not consent-the opinion of the person will be provided as part of the documentonn in all cases
- Human Rights considerations
- Enforcement of the sentence-continued enforcement and adaptation-both are possible under RO law



TRANSFER OF SENTENCED PERSONS

- **Active procedure in case of transfers to EU Member States**
- The person/delegate judge can initiate the procedure-documents sent to the execution court which drafts the certificate and sends the documents to the Executing State
- In case of partial recognition or adaptation, the execution court can either reject or agree on the transfer
- **Active procedure in case of transfer to third states**
- The person/delegate judge can initiate the procedure-documents sent to MoJ-sent to the Administering State-Moj-prosecutor office attached to the First Instance Court where the detention place is located-First Instance Court-Moj-Administering State
- MoJ drafting the request of transfer request



PASSIVE PROCEDURE

- **Passive procedure in case of transfer of Romanian nationals or residents from EU countries**
- Request EUMS-MOJ-POACofA-CofA-EUMS-CofA-EUMS-CofA-final consent EUMS
- **Passive procedure in case of transfer of Romanian nationals or residents from third countries**
- Request Sentencing State-MOJ-POACofA-CofA-Moj-Sentencing State-Moj-CofA-Moj-Sentencing State-Moj-CofA-Moj-final consent Sentencing State



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CHALLENGES AND GOOD PRACTICES

- **Challenges**

- Incomplete documentation
- Insufficient identification data or aliases
- Problems arising from lack of double criminality or incompatible substantial criminal law systems
- Insufficient connections of the sentenced person with the Executing State
- Others

- **Good practices**

- Consultations prior to the actual start of the transfer on conditional release, duration of procedures, possibilities of reintegration and rehabilitation, duration of procedures detention conditions, medical treatment
- Consultations during the judicial procedures on the double criminality, partial recognition, adaptation of the punishment



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Thank you for your kind attention

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