

Recognition and Enforcement of Criminal Sentences and Probation Decisions




MINISTERUL JUSTIȚIEI
DIRECȚIA NAȚIONALĂ DE PROBAȚIUNE

Case Study: Judicial Cooperation between Romania and Austria from the Perspective of Practitioners on FD947

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- Romania

Local and National context

Arad Probation Service

Romanian citizens under community sanctions	Foreign Nationals under community sanctions	 EU citizens	NON –EU citizens
93 %	7 % local 25% of national FN cases	35,5 %	64,5 %

Case Background

The case involves an individual (referred to as XY male, Romanian citizen, 29 years old) who was sentenced in Austria to 10 months imprisonment and ordered to undergo *therapy for alcohol and drug dependency upon release*

Timeline:

- October 2021: Criminal sentence in Austria.
- July 2022: Probation decision in Austria.
- August 2022: Conditional release with a five-year probation period, also, Austrian authorities initiated -using FD947- the transfer of probation in Romania

Legal Framework

Law Applied: National Law no. 302/2004 on international judicial cooperation including the FD947.

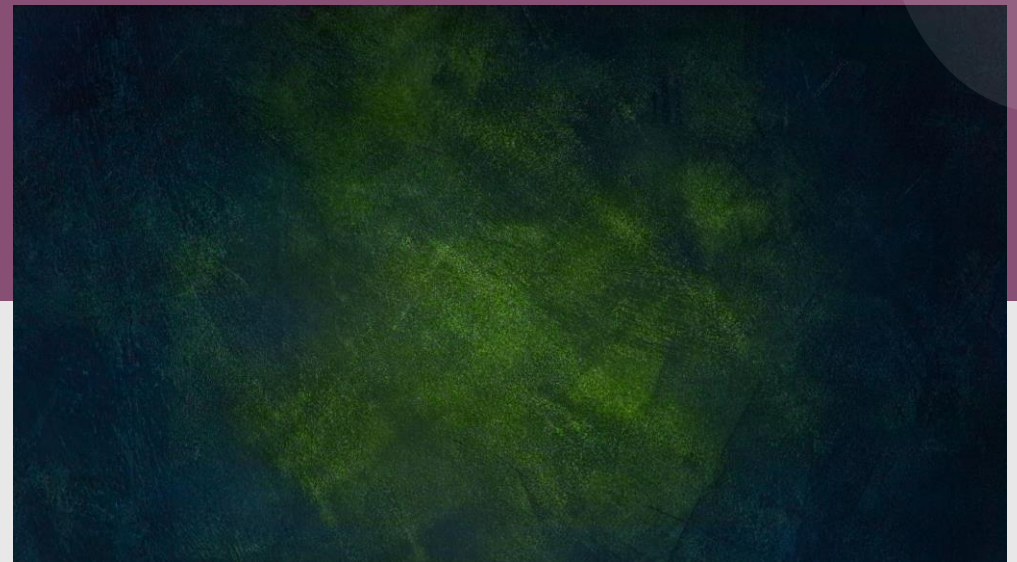


Requirements: Foreign decisions must produce legal effects

under Romanian
criminal law,

not contravene public
order,

have legal equivalents
in Romanian law



Role of the probation service

Based on the legal provisions, the Romanian probation service has an active role, including in the case of foreign citizens



According to Art.207 of Law 302/2004 ... the court orders the information of the probation service in whose district the person is to reside and requests the *Advisory Opinion* on the probation measures or the alternative sanction whose execution has been requested

Refusal of the probation service

The Probation Service in Arad, Romania, provided an *Advisory Opinion* on October 18, 2022, regarding the obligation imposed on Mister XY to undergo therapy for alcohol and drug dependency.

According to this opinion, the conditions for recognizing and adapting the alternative measure imposed by the Austrian judicial authority **were not met**

Based points of the refusal

Unclear Offense

Details: The documentation from the Austrian authorities did not specify the exact offense committed by Mister XY, only mentioning that he was placed in Penitentiary for an offense committed in a state of advanced intoxication with alcohol. Solved after notification.



Incompatibility of Conditional Release Systems:

The Austrian system of conditional release, which involves serving the full sentence followed by a probation term, is incompatible with the Romanian system. In Romania, the probation period corresponds to the unserved part of the sentence, and the supervision duration by the probation service represents one-third of the probation term, which cannot exceed two years.



Lack of Equivalent Facilities:

The Romanian national legal and health system does not have the same facilities for dependents as the Austrian system. The chances of Mister XY's social reintegration would significantly decrease if he were transferred to Romania.



Legal Correspondence of Offenses

- **Offenses:** The Austrian *offense of advanced intoxication* has no direct Romanian equivalent, but the underlying acts correspond to Romanian *offenses of threat and property damage*

Adaption of Incompatibility of Judiciary Systems

Austrian System: Full sentence execution followed by a probation term .

Romanian System: Probation corresponds to the unserved part of the sentence.

Adaptation: The court adapted the Austrian probation sanction to the Romanian legal measure of **mandatory medical treatment**.

Final Decision and...

Outcome: The Romanian court admitted the request, recognized the foreign sentence and probation decision, and ordered execution of the adapted medical treatment sanction under Romanian law informing Austrian authorities and setting procedural conditions for enforcement.

Supervision: The adapted medical treatment will be supervised by the **Romanian Probation Service in Arad** with regular reporting and cooperation with medical authorities .

Duration: Will not exceed the **five-year** probation term established by Austria.

...Consequences

- Failure to comply with the security measure is managed through the judicial procedure of substitution with medical internment (art. 568 of the Code of Criminal Procedure), **not through compliance mechanisms specific to probation services.**



Final remarks

- The significance of international judicial cooperation and the associated legal frameworks, which involve linking competent enforcement authorities to the implementation of probation measures.
- The value of tools and initiatives such as J-Cap, ERA, EMPRO and others in streamlining the process, enabling professionals to apply probation measures through FD with greater confidence and efficiency.

Let's have good practices !
If having any questions most of the best
answers are at coffee break ;)



Thank you!

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