THE FREE MOVEMENT OF JUDGMENTS AND JUDICIAL DECISIONS

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Abstract

EU substantive law is based on a system of circulation freedoms which encompasses the idea that the Union, its internal market or other areas of legal rule, such as the area of freedom, security and justice are, above all, spaces of liberty, which rejects the limits represented before by internal borders. So, the essential EU integrative concepts could be formulated as free circulation principles or instruments aiming to such freedoms. The free movement of judgments and judicial decisions represents concomitantly the consequence and the expression formulated through freedom of circulation, which is specific to EU law, of the principle of mutual recognition of judgments and judicial decisions between member states in both civil and criminal matters. This principle is based upon the mutual trust that member states owes to each other. Finally, the study analyses the principle of mutual recognition in EU law as a transplant from the internal market in the judicial cooperation in criminal matters, which produces numerous application instruments, among them the first and most productive is the European Arrest Warrant.

This paper studies also the common standard and paradigm that all instruments based upon the free movement of judgments and judicial decision have, amongst others: the warrant/order typology, direct communication between the competent authorities of Member States, elimination of the recognition procedure, the express mentioning of the mandatory and optional grounds of refusal, the partial removal of double criminality requirement etc.

Keywords: *EU substantive law, free circulation of judgments and judicial decisions, area of freedom, security and justice, the principle of mutual recognition, judicial cooperation in criminal matter.*

Introduction

The process of integration necessary for the construction and development of the European Union presupposes the coexistence of a horizontal dimension, usually called harmonization, which aims to "*remove any frictions that arise between different systems, thereby achieving legal harmony*"[1], and of a vertical dimension, represented by the approximation of laws, which is often achieved by setting minimum rules. Separately from these concepts, within the field of judicial cooperation, the free movement of judgments and judicial decisions, the consequence of the application of the principle of mutual recognition, also functions in an integrative way. The latter principle has numerous applications in Union law, its origins being found in the internal market field.

The European Union's substantive law is based on a system of freedoms of movement, which captures the idea that the Union's space, whether regarding the internal market, or other areas of legal regulation, such as the area of freedom, security and justice, is above all an area of freedom that removes the barriers previously represented by the borders between Member States. Thus, the essential integrative concepts of the Union can usually be expressed in a language specific to substantive law, or they can be formulated as freedoms of movement or as instruments having the purpose of such freedoms. From the free movement of goods, persons, services, capital and payments, specific to the definition and development of an internal market, the free movement of official documents issued by Member States (such as driving licenses, study diplomas, attestations and qualifications etc.), and then to the free movement of judgments and judicial decisions, first regarding the civil matters, and after the Amsterdam and Nice Treaties, also regarding criminal matters.

This study shows that the free movement of judgments and judicial decision within the space of liberty, security and justice of the European Union derives from the principle of mutual recognition, which was implemented in that space from the internal market. Part of the doctrine sustains that idea and part of it disagrees, as we will explain bellow.

1. The concept of free movement of judgments and judicial decisions

As previously stated, the free movement of judgments and judicial decisions represents the expression formulated by means of the concept of freedom of movement, specific to the substantive law of the European Union and, at the same time, the consequence of the principle of mutual recognition of judgments and judicial decisions between Member States (both in civil and criminal matters). This principle also relies, in its turn, on the trust that must exist between the legal systems of the Member States.

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[1] F. Calderoni, Organized Crime Legislation in the European Union – Harmonization and Approximation of Criminal Law, National Legislation and the EU Framework Decision on the Fight Against Organized Crime, Springer Heidelberg, Dordrecht, London, New York, 2010, p. 4.

The fundamental treaties do not define the principle of mutual recognition, neither in terms of its specific aspect regarding the internal market (since the concept has originated and developed in this context), nor in the field of judicial cooperation in civil or criminal matters. As regards the consequence of its application, namely the freedom of movement of judgments and judicial decisions, the Treaties do not even mention this notion. Thus, the Treaty on the Functioning of the European Union (TFEU) merely establishes that the principle of mutual recognition referred to in this study is the basis on which judicial cooperation in civil and criminal matters is built within the Union (Article 81 (1) and Article 82 (1) TFEU). As for the case of judicial cooperation in civil matters, the Treaty extends the field of mutual recognition of judicial also to extrajudicial decisions, while, in the field of judicial cooperation in criminal matters, the principle of mutual recognition remains strictly in the judicial area. The promotion of full application of mutual recognition in the area of freedom, security and justice is underlined by art. 70 of TFEU, which establishes the need for objective periodic evaluations regarding the application of this principle.

Another fundamental idea set out by the two articles mentioned above (Articles 81 and 82 of TFEU) is that the approximation of Member States' laws and regulations is subordinated to the aim of mutual recognition of judgments and judicial decisions (and regarding the case of judicial cooperation in civil matters also of extrajudicial decisions, such as the notary or arbitral ones).

Under these circumstances, it is up to other legal sources, doctrine and jurisprudence to define the concepts.

Thus, the European Commission Information Sheet entitled "*Recognition of decisions between EU countries"*[2] *states that "Mutual recognition of judicial decisions is a process whereby a decision usually adopted by a judicial authority in a Member State of the European Union is recognized and, where necessary, enforced by another State of the Union as if it was a decision taken by the judicial authorities of that latter State*".

Further, a distinction is made between traditional judicial cooperation involving an interstate relationship whereby a sovereign state is applying to another sovereign state, the latter having the power to decide whether to respond to the request and the system of mutual recognition of judgments and judicial decisions, which presupposes the automatic recognition by the judicial authorities of a State of "*decisions taken by the judicial authorities of another Member State of the Union with a minimum of formalities and with very few exceptions*".

The same document clearly underlines the idea that: „A free circulation of persons must correspond to a free circulation of judicial decisions. This is the point where the principle of mutual recognition leads to a real change in the philosophy of judicial cooperation. "

These ideas were synthesized on the basis of other documents, mainly the Presidency Conclusions of the meetings of the European Council, to which we will extensively refer within this study.

We consider this text of the European Commission to be of particular importance because it describes, in a highly concentrated, but at the same time very comprehensive manner, the strong connection between the principle of mutual recognition, its practical consequence, the free movement of judicial decisions and the fundamental freedoms of the Union, which make up its substantive law. Moreover, the free movement of judgments and judicial decisions itself becomes a fundamental freedom of the Union, a freedom that is generated by substantive law, but at the same time it facilitates the realization of the other four fundamental freedoms. Judgments and judicial decisions directly relate to individuals, to their legal status as parties of a litigation or judicial proceedings. Decisions of the judiciary also refer to the legal status of goods, services, capital and payments, depending on the subject matter of the dispute. All these entities enjoy the freedom of movement. It thus appears that those decisions, by means of an etiological effect, having as subjects or object, entities that enjoy the freedom of movement, enjoy themselves the same freedom, the one of being recognized and implemented anywhere within the European Union for the purpose of producing the legal effects for which they were adopted.

The reform regarding the concept of judicial cooperation requires that the freedom of movement of judicial decisions is, in principle, unconditional, with few exceptions and only minimal formalities. The basis of the new philosophy is the principle of mutual trust, according to which the Member States must trust the legal and judicial systems of other Member States. The principle was developed exclusively by jurisprudence, but built relating to a fundamental principle, provided by Article 4 (3) of the Treaty on European Union (hereinafter abbreviated as the TEU), the principle of loyal cooperation, under which "*Member States shall respect and assist each other in performing the tasks resulting from the Treaties*". These "*missions*" include the provision for the citizens of the Union, of an "*area of freedom, security and justice, without internal borders, under which the free movement of persons is ensured, in conjunction with adequate measures on external border control, asylum, immigration, crime prevention and combating of this phenomenon*" (Article 3(2) of the TEU). Combating the phenomenon of crime at the Union`s level and within its area of freedom, security and justice, referred to in the previous article quoted from the TEU, is nothing but the potentiation of police activity, of the law enforcement agencies in criminal matters, of the prosecutors and

[2] European Commission. Justice. Building a European Area of Justice. "*Recognition of decisions between EU countries*", only in English language, in electronic format at the address http://ec.europa.eu/justice/criminal/recognition-decision/index_en.htm , accessed on January 18, 2018.

courts, including the idea of building and developing the capacity of these bodies' decisions to take also effect in other states of the Union, different from those of the forum.

Another important reference to the free movement of judgments and judicial decisions is made in the preamble of the first concrete legal instrument developed by the Council, based on the principle of mutual recognition of judgments and judicial decisions in criminal matters, namely the Framework Decision 2002/584 /JHA[3]. Thus, the third sentence of paragraph 5 from the preamble to the Framework Decision states that: "*The classical cooperation relations which have so far dominated the Member States should be replaced by a system of free movement of judicial decisions in criminal matters, both those preceding the conviction and the final sentence, in an area of freedom, security and justice*. "

This is the point when we raise the issue of a system of free movement of judgments and judicial decisions in criminal matters, based on the principle of mutual recognition. In the case of the Framework Decision 2002/584 / JHA, the purpose of free movement of judgments and judicial decisions is that of the previous extradition procedure and of the surrender of defendants or convicts, for the purposes of prosecution, trial or execution of sentences in another State of the Union, other than the one in whose territory the defendant or convict is present at that specific moment.

Regarding this context, paragraph 6 of the preamble to the same Framework Decision states that: "*The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the «cornerstone» of judicial cooperation*".

In the field of judicial cooperation, a particularly important legislative act of the European Union, namely Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[4], at point 6 of the preamble clearly expresses the idea that the free movement of judgments in the matter of civil and criminal law represents an objective of the Union[5].

In view of the above, we define the free movement of judgments and judicial decisions as the consequence, expressed in the form of a freedom and specific to the substantive law of the European Union, of the application of the principle of mutual recognition of judgments and judicial decisions, representing the basis of judicial cooperation in civil and criminal matters, as instrument for achieving the legal integration at the Union`s level.

The principle of mutual recognition appears as a contemporary basis for judicial cooperation, but the TFEU seeks to approximate the laws and regulations of the Member States, in particular by laying down mandatory minimum standards, as an integration method that can be used to facilitate mutual recognition, or complementary to it (Article 81 (1) and Article 82 (1) TFEU). Thus, mutual recognition is a horizontal method of legal integration, and approximation of laws is the vertical integration method. The former is an application of mutual trust, which must exist between the judicial systems of the Member States, while the latter is an expression of the primacy of the Union law.

2. Historical milestones

As Union law rarely refers to the concept of free movement of judgments and judicial decisions, but it pays attention to the principle of mutual recognition as a precondition, we will continue to focus on the historical evolution of this principle. The origin of the concept of mutual recognition is found in the matter of the internal market of the European Union. The Treaty establishing the European Economic Community (TEEC) did not contain, in its original form, provisions regarding such a principle.

The principle was created by the case-law of the Court of Justice of the European Union and was designed to better respond to the desiderate of ensuring the free movement of goods within the common market (later, the Union's internal market).

2.1. The principle of mutual recognition in the matter of the internal market of the Union

In summary, "*Mutual recognition ensures market access for products that are not subject to EU harmonisation. It guarantees that any product lawfully sold in one EU country can be sold in another. This is*

[3] Framework decision from 13 June 2002 on the European arrest warrant and the surrender procedures between Member States 2002/584/JAI, OJ L 190/1, in electronic format at http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002F0584&from =EN, accessed on January 18, 2018.

[4] Regulation (EU) no. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, published in OJ L 351/1 from 20.12.2012, accessed in electronic format at the address, http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012R1215&from=EN on February 10, 2018.

[5] The Regulation quoted at note no. 4, preamble, point (6): "In order to attain the objective of free circulation of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable".

possible even if the product does not fully comply with the technical rules of the other country."[6]

The Treaty establishing the European Economic Community (hereinafter abbreviated TEEC) did not contain, in its original form, provisions relating to such a principle.

The adopting of mutual recognition within the internal market has been achieved because all measures to harmonize / approximate the legislation adopted by the Union through a long standardization of goods have failed to fully ensure their free movement within the internal market. Since the free movement of goods constitutes one of the fundamental freedoms of the Union and is part of its substantive law, the assurance of the full exercise of this freedom is an important objective for the Union legislature.

2.1.1. The jurisprudential basis of the principle of mutual recognition. "*Cassis de Dijon*".

As we have expressed above, the principle of mutual recognition, as a general principle within the internal market, has been established by jurisprudence, through the so-called "*Cassis de Dijon*"[7] case. The legal fact that generated the dispute between the Rewe Zentral AG and the Federal Administration of the German Alcohol Monopoly, constituted a prohibition on the marketing of alcoholic beverages on the German market, which did not meet the standards laid down by the domestic law of that State. The applicant, the German company importing "*Cassis de Dijon*" fruit alcoholic beverage in Germany, argued that the German law in question constituted a "*barrier to the free movement of goods between Member States, going beyond the trade rules reserved to them"* and being *"an effect equivalent to a quantitative restriction on imports, contrary to the Art. 30 of the EEC Treaty*[8] "[9].

The Court of Justice ruled exactly according to the idea advocated by the applicant during the main proceedings, when the main questions were raised, but what is really important from the point of view of accrediting a principle of mutual recognition directly related to the free movement of goods, is the wording of point 14, paragraph 4 of the judgment, which states that *'there is therefore no valid reason to prevent alcoholic beverages from being lawfully manufactured and marketed in one of the Member States that may be introduced in any other Member State without the lawful prohibition on the marketing of such beverages having an alcoholic strength below the limit laid down by national legislation*."

The direct conclusion of this finding made by the Court of Justice was that any product lawfully marketed in a Member State market may be imported and marketed on the market of another Member State, even if it does not meet the requirements of the national law of that State. This idea is nothing more than the principle of mutual recognition applicable in the internal market of the Union, in a direct and indestructible relationship with the free movement of goods.

2.1.2. Single European Act

A first establishment within the EEC Treaty of the principle of mutual recognition in the matter of the internal market arose with the first regulation of the approximation of laws within the same context.

Thus, the Single European Act[10], by means of art. 18, introduced within EEC Treaty art. 100A, which provided for the possibility of approximating the laws of the Member States in order to facilitate the free movement of goods, persons, services and payments in the common market. At that time, the approximation of legislation, particularly through standardization, has been seen as the most appropriate and effective way to ensure the principles of substantive Community law. However, as a result of the decision of the Court of Justice, regarding" Cassis *de Dijon*" case and the development of the legal reflection on mutual recognition that followed, almost ten years later, Article 100B (1) (2) notes as follows: "*The Council, acting in accordance with the provisions of Article 100A, may decide that the provisions in force in a Member State shall be recognized as equivalent to those applied in another Member State* ".

Notwithstanding this highly progressive provision introduced within the EEC Treaty by the Sigle European Act, the community has not developed until late, specific instruments for the principle of mutual recognition in the internal market. The main reason for this situation lies in the excitement at the time with the approximation of laws, especially through standardization, which has been regarded for decades as the most appropriate method for creating and stimulating the internal market.

Thus, a prime example of this attitude is the Council Resolution of 1999 on the role of standardization in Europe[11], which represents a real worship of the idea, miraculous method of solving all problems related to the internal market of the Union.

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[6] The document" European Commission. Economic growth. Single European Market. Single Goods Market. Free movement in harmonized and non-harmonized sectors. Mutual recognition.", published in English language, in electronic format, at the address http://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition_en , accessed on 19 January 2018.

[7] The decision of the Court of Justice from 20 February 1979 ruled in the case C-120/8, preliminary decision Rewe Zentral AG v. Bundesmonopolverwaltung für Brantwein, ECLI:EU:C:1979:42, in electronic format, at, http://curia.europa.eu/juris/show Pdf.jsf; jsessionid= 9ea7d2dc30dd7f53bdd76175434793478b6be99d05d3.e34KaxiLc3qMb40Rch0SaxyNb3v0?text=&docid=90055&pageIndex=0&doclang= EN&mode=req&dir=&occ=first&part=1&cid=230651 ,accessed on January 19, 2018.

[8] The article interdicts quantitative restrictions on import and measures with an effect equivalent thereto.

[9] Point 4 from the decision of the Court of Justice quoted in note 7 of this study.

[10] Single European Act signed in Luxembourg on 17 February 1986 and effective as of 1 July 1987, published in OJ L 189/1 from 29.6.87.

[11] The Council Resolution from 28 October 1999 on the role of standardization in Europe, published in OJ C 141 from 19.5.2000, p. 0001-0004, in English language, in electronic format at the address http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri= CELEX:32000Y0519(01)&from=RO, accessed on January 19, 2018.

In the sense of what has been said, we bring as a relevant example the preamble to the Decision 3052/95/EC[12], according to which the approximation of laws gives adequate results in the internal market, so that the principle of mutual recognition is not particularly relevant.

2.1.3. Subsequent to the Single European Act

The above presented vision, which gives an overvalued credit for the harmonization and approximation of internal market legislation, would last for a long time until the signing of the Treaty of Lisbon. Only at that moment, mutual recognition has been used to its true value for the Union's internal market.

Since we have referred to the Decision 3052/95 / EC of the European Parliament and of the Council, which is tributary to the approximation of laws within the common market, we note that it was repealed and that the priority given to harmonization would cease definitively by Regulation (EC) No. 764/2008 of the European Parliament and of the Council[13].

Thus, as the preamble to the regulation clearly states, the principle of mutual recognition within the internal market area, which has been judicially established and then introduced into the EEC Treaty by the Single European Act, was not given due consideration, but the steps initiated by that regulation would totally change this situation.

2.1.4. Mutual recognition of diplomas, certificates and other titles of formal qualifications

Considered as an application of the principle of mutual recognition in the field of freedom of movement of persons, in particular as regards the right of establishment, this type of mutual recognition was first established by the provisions of Article G.13 of the Treaty on European Union[14], which amended the provisions of art. 57 of the EEC Treaty, so that point 1 of the article acquires the following form: "*In order to facilitate the access to and the exercise of independent activities, the Council, acting in accordance with the procedure of art.189b, adopts directives on the mutual recognition of the diplomas, certificates and other administrative acts of the Member States which are the subject of a qualification*. "

A similar statement is also used by art. 53 par. (1) TFEU as a result of the Treaty of Lisbon [15].

2.1.5. Amsterdam Treaty and Recognition of Judicial and Extrajudicial Judgments in Civil and Commercial Matters

Article 2 (15) of the Treaty of Amsterdam[16] introduced within the text of the Treaty establishing the European Community (EC Treaty) Title III. a, entitled "*Visas, asylum, immigration and other policies related to the free movement of persons",* and the text of art. 73m (a), notes as follows: *"Measures in the field of judicial cooperation in civil matters with cross-border implications to be adopted pursuant to Article 73o as long as they are necessary for the proper functioning of the internal market include: (a) improving and simplifying: the cross-border system for the use of judicial and extrajudicial documents; cooperation in the administration of evidence; recognition and enforcement of judgments in civil and commercial matters, including decisions in out-of-court proceedings*."

Thus, the Treaty of Amsterdam established the principle of recognition and enforcement of judicial

[12] Decision no. 3052/95/CE of the European Parliament and Council from 13 December 1995 establishing a procedure for the exchange of information on national measures derogating from the principle of free movement of goods within the Community (repealed), published in OJ L 321 from 30.12.1995, in electronic format at the address http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX: 32000Y0519 (01)&from=RO , accessed on January 19, 2018. Preamble: "*The Commission has, in accordance with Article 100b of the Treaty, drawn up the inventory of national laws, regulations and administrative provisions which fall under Article 100a of the Treaty and which have not been harmonized pursuant to that Article; (...) that inventory has revealed that most of the obstacles to trade in products reported by Member States are dealt with either by measures taken under Article 100a or through proceedings initiated under Article 169 of the Treaty for failure to fulfil obligations under Article 30".*

[13] Regulation (EC) no. 764/2008 of the European Parliament and Council dated July 9, 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marked in another Member State and repealing Decision no. 3052/95/CE, published in OJ L 218/21 from 13.8.2008, at the address http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX: 32008R0764&from=EN ,accessed on January 19, 2018. Points (3) and (4) of the Regulation provide the following: „ (3) *The principle of mutual recognition, which derives from the case-law of the Court of Justice of the European Communities, is one of the means of ensuring the free movement of goods within the internal market. Mutual recognition applies to products which are not subject to Community harmonisation legislation, or to aspects of products falling outside the scope of such legislation. According to that principle, a Member State may not prohibit the sale on its territory of products which are lawfully marketed in another Member State, even where those products were manufactured in accordance with technical rules different from those to which domestic products are subject. The only exceptions to that principle are restrictions which are justified on the grounds set out in Article 30 of the Treaty, or on the basis of other overriding reasons of public interest and which are proportionate to the aim pursued.*

(4) Many problems still exist as regards the correct application of the principle of mutual recognition by the Member States. It is therefore necessary to establish procedures to minimise the possibility of technical rules' creating unlawful obstacles to the free movement of goods between Member States. The absence of such procedures in the Member States creates additional obstacles to the free movement of goods, since it discourages enterprises from selling their products, lawfully marketed in another Member State, on the territory of the Member State applying technical rules. Surveys have shown that many enterprises, in particular small and medium-sized enterprises (SMEs), either adapt their products in order to comply with the technical rules of Member States, or refrain from marketing them in those Member States".

[14] Treaty on European Union (Treaty of Maastricht), published in JO C 191 dated 29.07.1992, p. 0001-0110, in English language, in electronic format at the address http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:11992M/TXT&from=RO , accessed on January 19, 2018.

[15] In the volume "*Fundamental Treaties of the European Union*", edition coordinated and prefaced by A. Fuerea, updated on 1.06.2017, C. H. Beck Publishing House, Bucharest, 2017, p.54.

[16] The Amsterdam Treaty, in English, in electronic format at the address http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf , accessed on January 19, 2018.

and extrajudicial civil and commercial judgments (e.g. decisions of arbitral tribunals, decisions taken in notary proceeding etc.) in connection with the internal market, but in order to achieve the goals of that part of the pillar III which it has communitarised, directly related to the freedom of movement of persons, as an essential element of the Union's substantive law.

It should not be forgotten that the Treaty of Amsterdam has communitarised the third pillar of the European Community, excepting the part relating to judicial cooperation in criminal matters between Member States.

2.2. The principle of mutual recognition in the field of judicial cooperation in civil and criminal matters

2.2.1. The Cardiff European Council, 15-16 June 1998

This European Council, which took place during the British Presidency of the Union in the first half of 1998, has included on the agenda, among the main issues, the common fight against cross-border criminality, with a particular focus on environmental crime, drug trafficking, as well as racism and xenophobia.

The works of this European Council would also mark the first step in imposing the principle of mutual recognition of judgments and judicial decisions in criminal matters.

Thus, point 39 of the Conclusions of the Presidency of the European Council[17] states as follows: "*The European Council underlines the importance of effective judicial cooperation in the fight against cross-border crime. Recognizes the need to strengthen the capacity of legal systems to work together more closely and asks the Council to identify areas for wider mutual recognition of judgments between Member States.*"

The idea of enhancing the application of the principle of mutual recognition of judgments in criminal matters is directly related to the concerns raised at that time about an unprecedented development of cross-border crime in the European Union and the implicit recognition that the approximation of the criminal laws by establishing common minimum standards did not generate the expected results. This moment is at the very end of the Corpus Juris project, which has, over the last decade of the past century, aimed to achieve a common criminal law of the Union. The project, concluded in 1999 and considered a failure, was definitely forgotten, and the future of criminal law and criminal procedure at the level of the European Union would be definitively redirected towards mutual recognition.

On the occasion of the British Presidency of the European Council "*the emphasis on mutual recognition was justified by the UK on the grounds that the differences between Member State's legal systems limit the progress which is possible by other means and render the harmonization of criminal law time consuming, difficult to negotiate and (in full scale) unrealistic* ."[18]

Moreover, "*according to Jack Straw, then UK Home Secretary, one could be inspired from the way in which the internal market was unblocked in the 1980's, instead of opting for total harmonisation, conceive a situation where each Member State recognises the validity of decision of courts from other Member States in criminal matters with a minimum of procedure and formality*"[19] This statement made by the British Home Secretary represents an additional proof of the origin of the free movement of judgments and judicial decisions in criminal matters, coming out of the concept of mutual recognition applicable to the internal market of the Union.

2.2.2. Tampere European Council, 15-16 October 1999

The Presidency Conclusions of this European Council[20] have become famous for the provisions of point 33, which expresses the idea that the principle of mutual recognition of judgments and judicial decisions should become the "*cornerstone of judicial cooperation in both civil and criminal matters within the Union* ".

The same conclusions expressly and distinctly refer to the principle of mutual recognition of judgments and judicial decisions in civil and criminal matters, as well as to the subordinating relation of the establishment of common minimum standards in procedural matters to their purpose, in the effective realization of mutual recognition.

The recalled point 33 will be the leitmotiv of all judicial instruments subsequently developed by the Union, based on the principle of mutual recognition of judgments and judicial decisions, and the expression "*the cornerstone of judicial cooperation*", became the preferred metaphor of preambles and programmatic discourses in this field.

We find that phrase, for example, in point 6 of the preamble to Framework Decision 2002/584 / JHA on the European Arrest Warrant and surrender procedures between Member States, the first instrument developed in the area of judicial cooperation in criminal matters, based on the principle of the mutual recognition of judgments and judicial decisions between Member States, and which also promoted the idea set out in point 35 of the Conclusions of the Presidency of the Tampere European Council, concerning the replacement of the

[17] The European Council from Cardiff, 15-16 June 1998, Conclusions of the Presidency, in original, in English language, at the address http://www.europarl.europa.eu/summits/car1_en.htm# , accessed on January 19, 2018.

[18] V. Mitsilegas, *EU Criminal Law*, Modern Studies in Criminal Law, Hart Publishing Ltd., Oxford and Portland, Oregon, 2009, p. 116, and UK delegation document no. 7090/99, Brussels, 29 March 1999, par. 7-8.

[19] Idem 18, p. 116, taken over by V. Mitsilegas from "*Ministère de la Justice, L' espace judiciaire européen. Actes du Colloque d' Avignon*", Paris, 2008, p. 89, in his own translation.

[20] Original in English, in electronic format on the webpage http://www.europarl.europa.eu/summits/tam_en.htm , accessed on January 19, 2018.

formal extradition procedure with a simple surrender system between Member States (an idea reiterated in the preamble to the Framework Decision, section (5)).

The measures regarding the fluency character of judicial cooperation in civil and criminal matters, mainly linked to the Union's reorientation from the principle of approximation of laws by establishing common minimum standards to the principle of recognition of judgments and judicial decisions between Member States, were subordinated by the Tampere European Council, to the extension of the freedom of movement, within the Union's justice area.

Thus, paragraph 5 of the Presidency Conclusions states that "*Extending freedom requires a genuine area of justice where people can appeal to courts and authorities in any Member State, as easily as in their own state. Criminals should not be able to find ways to exploit the differences between the judicial systems of the Member States. Judgments and judicial decisions must be respected and enforced throughout the Union, while guaranteeing basic legal certainty for individuals and economic operators. Greater compatibility and greater convergence between the judicial systems of the Member States must be achieved*. "

2.2.3. Commission`s communication to the Council and to the European Parliament - Mutual Recognition of Final Decisions in Criminal Matters[21]

This Commission`s Communication, created upon the invitation launched by the Tampere European Council, provides a wider perspective on the concept of mutual recognition and approaches a first definition of this term, which refers to the recognition of final foreign judgments.

It is possible to distinguish between the recognition of a foreign judgment or judicial decision *per se* and the situation of subsequent recognition of a foreign judicial decision for the purpose of establishing a factual or legal situation, in another case which takes place in a jurisdiction of another Member State of the Union. An example of this could be the case of a final decision, regarding a defendant, for committing a serious crime that may be the basis for executing prison sentences in the state of recognition (e.g. by applying the exception to the European Arrest Warrant, when the defendant remains on the territory of the executing State and that State undertakes to impose the prison sentence on its territory) - *per se* (direct) recognition - as compared with the recognition of a foreign conviction judgment in a sentence for deeds of a certain gravity and committed under certain conditions, provided by the recognition right of the State, in order to establish the existence of recidivism or concurrent offenses during the main proceedings regarding a defendant, for other offenses subsequently committed on the territory of the State of recognition - (indirect)[22].

Within point 3.2., the Commission`s Communication defines the idea of a "*final decision*", in order to prevent any possible confusion, as long as such a notion has different meanings within the law of the Member States. By the instrumentality of a functional definition, the Commission states that the final decisions are "*all those decisions governing the substance of a criminal case and against which ordinary means of redress cannot be exercised, or even if an appeal is still possible, it does not have suspensory effect* ".

2.2.4. Program of Measures to Implement the Principle of Mutual Recognition of Judgments in Criminal Matters[23]

The Program provides for the adoption of concrete measures in the following issues of mutual recognition of judgments and judicial decisions in criminal matters. Thus, as regards *ne bis in idem* principle, the measures must be taken to strengthen legal certainty within the Union in the sense that a final conviction ordered by a court of a Member State is not called into question by another Member State.

In the area of individual sanctions, it is necessary to adopt instruments establishing the principle that a court in a Member State may take into account the final judgments of courts of other Member States for the purpose of assessing the criminal record of the defendant in order to determine the persistence in the criminal behaviour for justify properly the sanction and the way of executing it.

The orders regarding the purpose of obtaining evidence must ensure the admissibility of evidence, prevent the disappearance of evidence, and facilitate the searching procedures, so that the evidence

[21] COM/2000/0495 final, in electronic format, in English language, at the address http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52000DC0495&from=EN, accessed on January 21, 2018. Point 3.1 of the Communication provides: "*Mutual recognition is a principle that is widely understood as being based on the thought that while another state may not deal with a certain matter in the same or even a similar way as one's own state, the results will be such that they are accepted as equivalent to decisions by one's own state. Mutual trust is an important element, not only trust in the adequacy of one's partners rules, but also trust that these rules are correctly applied. Based on this idea of equivalence and the trust it is based on, the results the other state has reached are allowed to take effect in one's own sphere of legal influence. On this basis, a decision taken by an authority in one state could be accepted as such in another state, even though a comparable authority may not even exist in that state, or could not take such decisions, or would have taken an entirely different decision in a comparable case.*

Recognising a foreign decision in criminal matters could be understood as giving it effect outside of the state in which it has been rendered, be it by according it the legal effects foreseen for it by the foreign criminal law, or be it by taking it into account in order to make it have the effects foreseen by the criminal law of the recognising state".

[22] The direct/indirect recognition notions are also referred to in the introduction to the Program of measures to implement the principle of mutual recognition of decisions in criminal matters, published in OJ C 012 from 15/01/2001, p. 0010-0022, in electronic format, in English language, at the address http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001Y0115(02)&from=EN , accessed on January 21, 2018.

[23] The Program of measures to implement the principle of mutual recognition of decisions in criminal matters, published in OJ C 012 din 15/01/2001, p. 0010-0022, in electronic format, in English language, at the address http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001Y0115(02)&from=EN , accessed on January 21, 2018.

administered can be obtained as quickly as possible during the criminal case.

Measures for the confiscation of the proceeds of crime and granting of damages for the victims aim to ensure the recognition and enforcement of freezing orders, for the purpose of confiscation and granting for damages for the victims.

Arrest warrants must be progressive, so that they can be implemented throughout the European Union and alternative measures to detention should be assured by cooperation between the competent authorities of the Member States, when a person is subject to supervision during the criminal proceedings.

Taking into account the indictments is intended with a view to avoid jurisdictional conflicts between several Member States.

Other measures concerned the following issues: the immediate recognition and the enforcement of a final decision of a Member State, when extradition is refused by a Member State that has declared that it does not extradite its own citizens; the transfer of persons who have fled from justice after having been finally convicted in a Member State; the transfer of convicted persons in the interest of social reintegration; fines, confiscation, prohibitions and incapacities; follow-up measures to the obligations established by final judgments, following the execution of sentences and the establishment of a peer review mechanism for assessing the progress made by Member States in the area of the recognition of judgments and judicial decisions in criminal matters.

2.2.5. The European Council. The Hague Program: Strengthening Freedom, Security and Justice in the European Union[24]

Paragraph 3) is pointing out the need to intensify the efforts regarding the building of a justice area of the Union, The Hague Program would place particular emphasis on the principle of recognition of judgments and judicial decisions in civil matters and, in particular, in criminal matters.

Thus, point 3.3.1. of The Hague Program refers to mutual recognition in criminal matters, indicating that the measures to be adopted must relate to judicial decisions at all stages of the criminal proceedings or any other decision relating to the gathering and admissibility of evidence, conflicts of jurisdiction and *non bis in idem* principle, as well as the execution of final convictions to imprisonment or other sanctions; equivalent standards for procedural rights should also be created. Other envisaged activities included adopting of the draft of the Framework Decision on the European Evidence Warrant[25] and the invitation to the Commission to present its proposals on promotion of the exchange of information in national criminal records, related to convictions and forfeits, particularly in the matter of sex offenders, as well as on electronic information exchange system.

2.2.6. The European Council. Stockholm Program - An open and secure Europe serving citizens and protecting their rights[26]

Within point 3 of the Program, the connection between the principle of mutual recognition and mutual trust, which should be strengthened between the Member States' judicial systems, is seen as a situation that will lead to the creation of a common legal culture. Also, the approximation of legislation in criminal matters, in particular by establishing common minimum rules in criminal and procedural criminal law, is entirely subordinated to creating the best conditions for facilitating the application of mutual recognition.

Point 3.1.1.of the Program approaches the issue of mutual recognition of judgments and judicial decisions in criminal matters strictly from the point of view of judicial cooperation, identifying new areas where specific legal instruments can be developed, including the protection of victims of crime and witnesses, a unitary system for the administration of evidence in cases of cross-border crime, given the fact that the one existing until that time was a fragmented one, but which still has the flexibility of judicial assistance in criminal matters (see, for example, the functioning of joint investigation teams, especially when mediated by Eurojust); minimizing the reasons regarding the refusal of execution. Other targeted areas were: the procedures for obtaining information on convictions and sanctions, the rapid procedures for transmitting information from private law legal entities of other States without coercive measures, improving of the framework of the European Arrest Warrant, executing in other states the administrative sanctions applied for contraventions in connection with road traffic etc.

As regarding the civil matters, mutual recognition is approached within point 3.1.2. of the Program, insisting on the elimination of the exequatur procedure, along with the adoption of a series of rules on conflict of laws and procedural measures.

2.2.7 The principle of mutual recognition – a transplant from the internal market of the Union to the judicial cooperation area

Versus the historical developments presented above, we have no doubt that there is an indestructible connection between the four fundamental freedoms of the Union, forming its substantive law and the freedom of movement of judgments and judicial decisions, both

[24] Council. The Hague Programme: Strengthening Freedom, Security and Justice in the European Area, OJ C 53/1 3.3.2005, in original in English language and electronic format on the webpage http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:053:0001:0014:EN:PDF , accessed on January 20, 2018.

[25] EEW = European Evidence Warrant, regulated by Framework Decision 2008/978/JAI of the Council dated 18 December 2008 on the European Evidence Mandate for the purpose of obtaining objects, documents and data for use in the proceedings in criminal matters, published in OJ L 350/72 date 30.12.2008;

[26] Published in original in OJ C 115/1 dated 4.5.2010, in electronic format on the webpage http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=OJ:C:2010:115:FULL&from=RO , accessed on January 19, 2018.

in civil and criminal matters. As long as the judicial cooperation in civil matters is more closely related to these fundamental freedoms and extends through the application of the principle of mutual recognition to civil and commercial extrajudicial documents and decisions, judicial cooperation in criminal matters, as it depends on public law, relevant to the Member States' sensitivity to possible concerns regarding the integrity of their national sovereignty, has a narrower and a much more carefully defined content. However, the ideological origin of the principle of mutual recognition in this field can also be found in the creative effort of constructing the internal market[27], because everything has begun at that specific point, when trying to structure the concept of integration: horizontal (through harmonization), vertical (by approximating of the legislation and by setting the minimum rules) and transversal (by adopting the principle of mutual recognition).

Every step by which a refinement of a fundamental freedom of the Union was achieved, corresponded to a creative approach of conceiving a new subsidiary and instrumental "*freedom of movement*". The freedom of movement of judgments and judicial decisions in civil matters was absolutely necessary for the development of the free movement of goods, persons, services and capital, and the freedom of movement of judgments and judicial decisions in criminal matters developed, as a result and in close connection to the freedom of movement of persons and the right to establishment, as an effort to prevent the spreading of cross-border crime and the creation of shelters for offenders in other Member States of the Union, in order to escape from the justice.

However, there are prestigious authors who do not share this opinion, including Valsamis Mitsilegas[28], who insists on the legal difference between the commercial law and the criminal law, the latter considering the state as a subject of the legal relationship and assuming a very scrupulous respect for human rights and fundamental freedoms (the right to liberty, to a fair trial, to defence, the presumption of innocence, etc.). Moreover, the author insists that the essence of the rule of law is represented by the fact that the rules of the criminal law should be publicly debated (as opposed to accepting them based on a presumed mutual trust).

Within the above-mentioned ideas, the author refuses to consider the origin of mutual recognition of judgments and judicial decisions in criminal matters in the principle of mutual recognition in the matter of internal market, but the reasoning he builds is related to the internal constitutional legitimacy, at the level of the Member States, related to applying such a principle. There is no doubt, however, that the empirical vision adopted by the Union regarding this principle, which solves the dilemmas and finds appropriate solutions to the progress regarding the area of freedom, security and justice, which could not be solved by harmonizing or approximating the laws is a British cultural characteristic. It should not be forgotten that the idea of changing the paradigm from harmonization to mutual recognition in criminal matters was launched during the British Presidency of the Union during the first half of 1998. The new paradigm has the legitimacy required by the principle of the primacy of the Union law and this results from the mutual trust between the legal systems of the Member States. Moreover, the desire to respect the constitutional traditions of the Member States is much better achieved by means of the principle of mutual recognition, than by establishing common minimum rules on criminal offenses, punishments and criminal proceedings.

2.2.8. Schengen Agreement and the Convention Implementing the Schengen Agreement (CISA)[29]

As a result of art. (1) of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty of Amsterdam, the Council adopted Decision 1999/436 / EC on 20 May 1999 determining, in accordance with the relevant provisions of the EC Treaty and of the EU Treaty, the legal basis for each of the provisions and decisions that make up the Schengen acquis together. The Council thus selected Art. 31 and 34 EU Treaty (consolidated post-Amsterdam and Nice version), which are part of Title VI of the EU Treaty: "*Provisions on police and judicial cooperation in criminal matters*" as the legal basis for the integration of Art. 54-58 CISA. These latter provisions make up Chapter 3, entitled "*Applying ne bis in idem principle*", from the Title III "*Police and Security*" of the CISA.

Article 54 of the CISA refers to the principle *ne bis in idem*, a principle that implies *ipso facto* a recognition form of a judgment of another Member State, but aimed at avoiding the duplication of that criminal procedure in another Member State of the Union.

According to art. Article 54 of the CISA: "*A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting*".

[27] A. Klip, European Criminal Law. An Integrative Approach, 3rd edition, Ius Communitatis Series, Volume 2, Intersentia, Cambridge-Antwerp-Portland, 2016, p. 395: "*Mutual recognition is inspired by the principle of the internal market (...)*"

[28] V. Mitsilegas, The Constitutional Implications of Mutual Recognition in Criminal Matters in the EU, Common Market Law Review 43, 2006, Kluwer Law International, p. 1280.

[29] The Convention Implementing the Schengen Agreement dated June 14, 1985, concluded among the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, hereinafter abbreviated CISA.

This wording of *ne bis in idem* principle implicitly results in a negative recognition of the convicting judgment in another Member State and it is based on the trust that must exist between the judicial systems of the Member States.

One convincing example in that regard is the judgment of the Court of Justice of 11 February 2003 in Joined Cases C-187/01 and C-385/01, concerning the preliminary rulings in criminal proceedings concerning Hüseyin Gözütok and Klaus Brügge[30].

This decision raises the issue regarding the interpretation of art. 54 of the CISA, stipulating that a decision taken by the Prosecutor's Office on the basis of a court settlement concluded between the prosecutor and the defendant in the absence of any form of judicial control, but which produces authority of the national law of the state in which it was adopted, hinders the prosecution criminal proceedings or conviction of the person concerned in criminal proceedings for the same acts in the territory of another Member State.

In order to come to this conclusion, the Court's legal syllogism also made an important point in the finding made in paragraph 33 of the judgment: *" In those circumstances, whether the ne bis in idem principle enshrined in Article 54 of the CISA is applied to procedures whereby further prosecution is barred (regardless of whether a court is involved) or to judicial decisions, there is a necessary implication that the Member States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied*."

Also, regarding this case, we note the emphasis on the mutual trust that the Member States' criminal justice systems should have expressed by the Court of Justice.

A fact that is not clear regarding the mutual trust in justice, is whether it exists or it should exist. Returning to Mitsilegas argument, presented above within the point II.2.7. of this study, that such a trust is hard to exist in the absence of a public negotiation of criminal law, the conclusion that we might draw is that trust must exist, even if it does not form spontaneously. Along the same lines, see also André Klip's position[31].

3. The principle of mutual recognition in the field of judicial cooperation in criminal matters - concrete legal instruments

3.1. European Arrest Warrant (EAW)

As I pointed out above, within the section I of this study, the European Arrest Warrant was the first concrete legal instrument that relied entirely on the free movement of judgments and criminal judicial decisions.

The Framework Decision 2002/584 / JHA, which governs it, shows within its text the connection that the EAW has with the principle of mutual recognition of judgments and judicial decisions, as seen in the light of the Conclusions of the Tampere European Council Presidency. Thus, points (5) to (7) of the preamble to the Framework Decision refer to the replacement of the classical extradition system between the judicial authorities of the Member States, mainly based on conventions of public international law with a surrender system of the suspects, of the defendants and of the indicted persons.

Thus, point (5) of the Framework Decision provides, inter alia, that: „*Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice*."

It is easy to notice that the texts referred to above are directly inspired by paragraphs 33 and 35 of the Presidency Conclusions of the Tampere European Council of 15-16 October 1999 as discussed above under point II 2.2. of this study.

Immediately after entering into force of the Framework Decision 2002/584/JHA, the EAW was questioned before the Court of Justice of the European Union in the context of a request for a preliminary ruling by a Belgian court which specifically concerned the Council's possibility of regulating an arrest and surrender procedure based on the principle of mutual recognition of judgments and judicial decisions in the field of extradition, which was still considered at that time to belong to international public law based on international conventions and treaties.

The problem was settled in favour of EAW by means of the judgment of the Court (Grand Chamber) of 3 May 2007 in Case C-303/05, request for a preliminary ruling made by Arbitragehof (Belgium), regarding the procedure Advocaten voor de Wereld VZW against Leden van Ministerraad [32].

Advocaten voor de Wereld thus argued that Art. 34 par. (2) lit. (b) of the EU Treaty refers only to framework decisions which can be adopted exclusively for the harmonisation of laws and regulations of the Member States.

The applicant in the Belgian internal litigation focused on the list of criminal areas provided by the provisions of Article 2 par. (2) of the Framework Decision as embodied in the Belgian transposing law, stating in respect of that list that it "*infringes the principle of equality and non-discrimination in that, for the offences mentioned in that latter provision, in the*

[30] ECLI:EU:C:2003:87, in electronic format, in the English language, on the webpage http://curia.europa.eu/juris/document /document.jsf?text=&docid=48044&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=446188 ,accessed on 19 January 2018.

[31] Idem point 27, p. 400: "The Rule is that there "should" be mutual trust among the member states."

[32] ECLI:EU:C: 2007:261, , in electronic format on the webpage http://curia.europa.eu/juris/document/document.jsf?text= &docid=61470&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=422244 , accessed on January 19, 2018.

event of enforcement of a European arrest warrant, there is a derogation, without objective and reasonable justification, from the requirement of double criminality, whereas that requirement is maintained for other offences."(point 12 of the judgment). Concerning the same list, another criticism of the complainant was that "it lists, not offences having a sufficiently clear and precise legal content, but only vague categories of undesirable behaviour" (paragraph 13).

All these criticisms were brought by the Advocaten voor de Wereld before the Arbitragehof, referring to the Belgian law transposing the framework decision on the EAW, but the court found that the criticisms in fact refer to the Framework Decision itself (point 14 of the judgment).

The Court of Justice, analyzing the issues, essentially points out that judicial cooperation in criminal matters should be favoured in order to contribute to the achievement of the Union's objectives (Article 34 (2) EU Treaty), in which the Council, pursuant to Article 34 (2) (a) to (d) EU Treaty, has the possibility of adopting both framework decisions, but also to initiate conventions, and no order of priority has been established between these instruments. The quintessence of the Court's interpretation is exposed, however, in paragraphs 28-32 of the judgment.

Thus, with regard to the first question referred, the Court of Justice has concluded that the Framework Decision was not adopted in breach of the provisions of Art. 34 par. (2) (b) of the EU Treaty, the Council being empowered to regulate the issue of the surrender of persons sought by Member States in others for the purposes of prosecution, judgment or execution of a sentence by a framework decision, and not necessarily by an extradition convention in the classical sense of the concept.

With regard to the possible violation of the principle of legality of criminalisation and punishment, in the context of the list of criminal areas exempt from double criminality, in paragraph 53 of the judgment, the Court states that "*the definition of those offences and of the penalties applicable continue to be matters determined by the law of the issuing Member State, which, as is, moreover, stated in Article 1(3) of the Framework Decision, must respect fundamental rights and fundamental legal principles as enshrined in Article 6 EU, and, consequently, the principle of the legality of criminal offences and penalties*".

The Court's conclusion is that, in the light of the arguments put forward by Advocaten voor de Wereld, there is no breach of the principle of legality.

The latter aspect examined by the Court was intended to determine whether the exclusion of the requirement of double criminality for a part of the offenses, namely those listed in Art. 2 par. (2) of the Framework Decision, combined with the maintenance of this requirement in respect of other offenses, violates the principle of equality and non-discrimination.

The legal syllogism of the Court has been built on the idea that equality and non-discrimination require "*comparable situations not to be treated differently and different situations not to be treated in the same way unless such treatment is objectively justified*"(point 56 of the judgment). Next, in paragraph 57, the Court points out that the establishment of the list of criminal areas for which there is no need to verify the condition of double criminality corresponds to an objective criterion: the gravity of the affectation of public order and security through those offenses.

The conclusion was that the different legal regime regarding the list of criminal fields for which double-criminality is not required and all other offenses is justified on the basis of the objective criterion of their gravity, assessed *in abstracto*.

Finally, the Court of Justice found that none of the arguments put forward by Advokaten voor de Wereld against Framework Decision 2002/584 / JHA is valid. We believe that this judgment of the Court of Justice is highly important, because it carries out a substantive examination of the Council's empowerment to use the Framework Decision as an act that regulates the surrender procedures of suspects, defendants and of the convicts who escape criminal prosecution, judgment or the execution of punishment on the territory of other Member States of the European Union, procedures based on the principle of mutual recognition of judgments and judicial decisions, that is a completely different legal paradigm than the classic one, represented by the international conventions on extradition.

EAW was not only the first legal instrument based entirely on the principle of mutual recognition of judgments and judicial decisions, but was and still is the most widely used, the most prolific and most effective instrument. The fulminating success it had in the field of criminal judicial cooperation between the Member States of the European Union, made the principle of mutual recognition affirm and acquire the trust of many sceptics.

Starting from the success of the EAW, a plethora of other legal instruments based on mutual recognition in criminal matters have emerged and proved to be effective in the context of judicial cooperation in criminal matters.

3.2. Other legal instruments based on the mutual recognition of judgments and judicial decisions in criminal matters

In chronological order, the second instrument that used the freedom of movement of judgments and judicial decisions in criminal matters was the freezing order of goods and evidence. It was governed by the Council Framework Decision 2003/577 / JHA[33]. Very

[33] Framework decision 2003/577/JAI from July 22, 2003 on the execution within the European Union of the freezing property or evidence orders, published in JO L 196/03 dated 2.8. 2003, in electronic format, at the address: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:196:0045:0055:en:PDF , accessed on January 21, 2018.

similar in many respects to the Framework Decision 2002/584 / JHA, the preamble this Framework Decision also invokes the principle of mutual recognition of judgments and judicial decisions in the perspective of the Tampere European Council. Along with the situation of the Framework Decision on the European arrest warrant, this Framework Decision contains, in Article 3 (2), the same list of criminal areas which exempt the implementation of the freezing order or evidence from verifying the condition of double criminality.

Generalizing, we find that there is a common structure for all of these Council Framework Decisions that govern the application instruments of the principle of mutual recognition in criminal matters, which encompasses the following regulatory chapters: the preamble (inspired by the Conclusions of the Presidency of the Tampere European Council), definitions, offenses for which double-criminality does not need to be verified, other offenses to which the instrument applies, the procedure for issuing, transmitting and enforcing the instrument, grounds for non-recognition of the order, postponement of execution, refusal to execute, judicial review and remedies, certificates or other documents to be filled in and transmitted with the enforcement order.

The principles underlying the concrete instruments for achieving mutual recognition in criminal matters are as follows:

a) the typology of those instruments: warrants and orders - these are not requests from the judicial authorities to the equivalent of other Member States, but imperative requests, true orders, the execution of which is mandatory;
b) direct communication between the competent judicial authorities of the issuing State and of the executing State, respectively; this involves directing the warrant/ order directly by the issuing authority to the competent judicial authority to execute it;
c) the complete elimination of the recognition of the warrant/order so that it becomes effective at the time of issue, except for the restrictive and express cases set out in the Union's legislative act governing it;
d) the express mention of the mandatory and optional grounds for refusal of execution;
e) the partial removal of the double criminality verification requirement - as we have seen in the Framework Decision 2002/584/JHA, but also in the Framework Decision 2003/577/JHA, or other legislative acts of the same type, there is a list of offenses that, due to their seriousness assessed *in abstracto*, are exempted from verifying the double criminality as a precondition for the execution of the warrant /order;
f) the elimination of the condition of reciprocity, which makes no sense any longer, while the Member States are however legally obliged to ensure the same treatment, considering the nature of the implementing instrument, based on mutual recognition;
g) the principle of specialty - according to which the judicial authorities of the issuing state can use the execution of the warrant /order only in direct connection with the material crimes in respect of which it was issued; extending the purpose of the warrant/order may be achieved only with the express consent of the executing authority or on the basis of the consent of the person to whom the warrant or order refers;
h) respect for human rights and fundamental freedoms in criminal proceedings, both those relating to the suspect, defendant or convicted person, as well as those concerning the legal situation of the other participants in the criminal proceeding: victims, injured or civilians, witnesses, experts and so on; these rights include: the right of respecting the presumption of innocence, the right to freedom, the right to a fair trial, the right to defence, the right to translation and interpretation, the right of access to the case file and all the evidence administered, the right to be judged in attendance, the right to execute custodial sentences in conditions that ensure the dignity and safety of the person; some of these rights have been diachronically subject to measures establishing minimum standards for criminal proceedings.

On the basis of the same principles and structure, many legal instruments have been elaborated in a diachronically, which enhance the value of the free movement of judgments and judicial decisions in criminal matters.

4. Conclusions

The free movement of judgments and judicial decisions in civil and criminal matters is a method of achieving the legal integration of the European Union and the consequence of the principle of mutual recognition, being also the expression of the substantive law of the Union. The free movement of persons and the right of establishment have given rise to the freedom of movement of judgments and judicial decisions in criminal matters, while the four fundamental freedoms have caused the free movement of judgments, judicial and extrajudicial decisions in civil and commercial matters.

The source of this legal paradigm lies in the effort to build the internal market of the Union, a field from which it was transplanted into the area of freedom, security and justice, together with its creation and operationalization in the era of the Treaty of Amsterdam and the forthcoming times.

As a fundamental principle in civil and commercial matters, the free movement of judgments essentially means abandoning the necessity of an exequatur to produce the effects of the judgments

within a Member State, other than the one of the judicial authorities which has ruled them.

In criminal matters, this principle has given rise to a large number of distinct legal instruments, among which the first and the most important is the European arrest warrant, but very important are also: the European order for the freezing of property and evidence, the European Investigation Order (that partially replaces the precedent order, but also the European Evidence Warrant), the European Protection Order (of victims and witnesses) etc.

From the point of view of what judicial cooperation in criminal matters means, the emergence and application of these legal instruments based on the free movement of judgments and judicial decisions has truly constituted a "*cornerstone*" (as the Tampere European Council names it within the Presidential Conclusions) and has greatly replaced the previous instruments of judicial assistance in criminal matters (such as, for example, the practice of joint investigation teams - JIT).

If up to present, among all these instruments, the most prolific and most effective has proved to be the European arrest warrant, we believe that in the future, the place it will occupy will be equal to, if not even beyond, the European Investigation Order, an instrument that has recently entered into force (2017) and practically replacing almost all the previous instruments of judicial assistance in criminal matters between the Member States of the European Union.

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- Court of Justice judgment from 20 February 1979 ruled in the case C-120/8, preliminary decision Rewe Zentral AG v. Bundesmonopolverwaltung für Brantwein, ECLI:EU:C:1979:42