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## THE PROBLEM WITH IMPLEMENTATION OF HUMAN RIGHTS IN THE EXECUTION OF EUROPEAN ARREST WARRANT

### Abstract:

In this paper, the author will deal with practical cases from execution of the European arrest warrant. Often there is a negation of the rules in practice, in the matters of EAW the most common violations are inhumane conditions in prisons and disregard of basic court procedures. In cases which the author analyzed there were serious disregard of court procedures. These kind of violations, member states of European Union, primarily as arranged democratic states must not allow themselves. Author will analyze not just the controversial cases, but also, generally defined Councils Framework Decision on the European arrest warrant, and which problems that causes. In some cases, we have a problem of non-compliance of national law with the Framework Decision, which creates even bigger problems with execution of EAW.

The author will address the issue of extradition linked with delicate issues of the state sovereignty, and in which cases EAW is a means for manipulation and used with political purpose. Objectives of the author are to classify human rights violations, based upon practical examples, and to identify the causes that lead to them and at the end to clearly state positive and negative sides of EAW. The author believes that the EAW provides much more benefits than harm, and will present her conclusions how much room for improvement of the regulations and procedures, is there.

### Keywords:

European arrest warrant, European Union, Human Rights, Framework Decision

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## Introduction

Extradition is one of the issues that Europe was committed from the outset, so the first convention about this issue was made in 1957. by the Council of Europe. [1] The European arrest warrant was established by an EU framework decision in 2002. With the ratification of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member State [2], EAW abolished formal extradition between EU Member States and replaced it by a system of surrender. [3] The EAW radically changed existing arrangements of cooperation (however the EU Member States may continue to apply bilateral or multilateral agreements between EU member States).[3] The purpose was to eliminate differences among legal systems in all Member States, when these are contrasting with EU minimum standard.[3] Member States are obligated to implement framework decision into national legislation. [3]

This was the first instrument to be adopted on the basis of the principle of mutual recognition of judicial decisions. [1] It came into force on 1 January 2004 and is founded on the principle of direct contacts between the judicial authorities. [4] EAW simplifies and speeds up the extradition between the EU Member States, i.e. within the single European judicial area. [3]

So, we can define the European arrest warrant as a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.[1]

An EAW can be issued against person if he or she has been charged with a criminal offence

(carrying a maximum sentence of minimum 12 months imprisonment) in a European Union (EU) Member State, and that State wants you to face trial there. [2] It can also be issued if you have been tried and convicted in an EU Member State and that State wants you to serve your prison sentence (where it is a sentence of at least 4 months). [2] An EAW can be issued for a wide range of offences, from involvement in serious organised crime and terrorism to more minor offences like theft. [2] In some cases you can be extradited even if the alleged activity is not a criminal offence in the country considering the extradition request. [2]

A person who is the subject of the European arrest warrant is protected both during the execution of the EAW in the country where he or she was arrested, and in the country that is seeking his arrest and extradition. [1] On one hand, on his (non) extradition court decides in two instances, one of which is usually the highest court in the country. [1] Position of the subject is in great deal influenced by the guarantees he has under the law of the State in which he will be extradited. [1] Also, both countries are bound by the bilateral agreements and other multilateral instruments that are ratified and concerning fundamental human rights and freedom. [1] European Commission found that some countries (Denmark, Lithuania, Poland, Portugal) have not have sufficiently defined certain rules of procedure, which can lead to jeopardizing the rights of the accused. [1]

As for the protection of the human rights in the EU framework decision, in Chapter 1, under the General Principles, Article 1, paragraph 3 it is said:

„ This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal

principles as enshrined in Article 6 of the Treaty on European Union. “[2]

Additional legal protection of human rights is provided by two important documents. The first is the Treaty on European Union, or Maastricht Treaty [5], which entered into force in 1993. In addition to the Treaty on European Union, one other document is important for human rights. In terms of the European Convention on Human Rights (ECHR) [6], which forms part of the *acquis* of the European Union and which signatories are all EU member states. ECHR is clear about the obligations of states to protect human rights from serious violations of their human rights in another country. [1]

Certain individual rights of requested person are protected in the enumerated and widely defined principles which state that Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases:

- Mandatory non-execution- the executing judicial authority must refuse to surrender the requested person if :

1. the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which

the arrest warrant is based under the law of the executing State. [1]

-Grounds for optional non-execution of the European arrest warrant-the executing judicial authority may refuse to surrender the requested person if :

- The requested person is being prosecuted in the executing member state for the same act,
- The prosecutorial authorities in the executing state decided not to prosecute the requested person, or having begun such a prosecution halted it,
- The requested person was being prosecuted in the executing member state, that case having progressed to final judgement,
- The act on which the EAW is based comes under the jurisdiction of the executing member state and would be statute barred there,
- The requested person was prosecuted in a third country, the final judgement having been made, provided that the sentence in respect of the offence (if one was imposed) had been served or may no longer be executed under the laws of the third country,
- The offence was committed or alleged to have been committed in the territory of the executing state, or
- The offence was committed or alleged to have been committed other than in the territory of the issuing state and the law executing state would not allow for the prosecution of the same offence if committed outside its territory. [1]

## Implementation of the Framework decision

The United Kingdom in its extradition legislation, which implemented the Framework Decision, included a special provision that states that extradition shall not be executed if with that act

they will breach individual rights guaranteed by the European Convention on Human Rights. [1] We have the same solution in Ireland, while Spain and the Netherlands only refers to the fact that the European Convention on Human Rights is the part of their internal legal system. [1]

Although the wording of the Framework Decision could have been clearer, Article 1(3) of the Framework Decision and paragraph 12 of its Preamble (read in connection with the Articles 1 and 13 of the European Convention on Human Rights) compel to interpret the Framework Decision in such a way, that, if the requested person would be exposed to a real danger (such as- his human rights might be violated) surrender should be refused. [1] However, Framework Decisions does not entail direct effect (as said by the Treaty on EU); therefore, citizens can not directly invoke provisions of Framework Decisions in court. Consequently, the answer to the question of how a Judicial Authority must deal with a claim that surrender would result or would probably result in the violation of a human right is not determined by the provisions of the Framework Decision, but by the human rights exception contained in the national Implementation Act. 10. [1]

The problem with the implementation of the Framework Decision in Germany was linked to human rights issue. In 2005 The German Constitutional Court put the law ineffective because it was inconsistent with the Constitution. [1] The judgment notes that the law does not guarantee the procedural rights of the accused and his basic human rights. [1] The whole case ended up in front of the Constitutional Court based on the appeal of the German national who was extradited to Spain on EAW, terrorism charges. [1] The Constitutional Court held that the defendants procedural rights, according to this law, do not have sufficient protection. [1] This leads to a

position that is opposed to the text of the Constitution and because of that apparent lack, Framework Decision can not be implemented until the adoption of a new regulation that will implement Framework Decision in a correct way. [1] Although the new version was ready soon, there was a period in which judicial authorities had legal gap when they implemented old regime of extradition. [1]

Fair Trials International (FTI), the London-based human rights non-governmental organisation, claims to have highlighted a number of cases which demonstrate that the European arrest warrant system is causing serious injustice and jeopardising the right to a fair trial. In particular, FTI asserts that:

- European arrest warrants have been issued many years after the alleged offence was committed.
- Once warrants have been issued there is no effective way of removing them, even after extradition has been refused.
- They have been used to send people to another EU Member State to serve a prison sentence resulting from an unfair trial.
- Warrants have been used to force a person to face trial when the charges are based on evidence obtained by police brutality.
- Sometimes people who have been surrendered under European arrest warrant have to spend months or even years in detention before they can appear in court to establish their innocence. [7]

Fair Trials International casework repeatedly demonstrates the human cost of existing cooperation measures. Under the European arrest warrant, people from all across Europe are being sent to other EU member states for the most minor offences, or to serve prison sentences imposed after unfair trials. As about half of FTI cases concern

Europe, so they have compelling evidence of the need to improve fair trial rights across the Union. It is hugely disappointing that, to date, the UK and a minority of other states have vetoed efforts to improve standards of justice, choosing instead to trust other European legal systems to deliver justice - a trust that is sometimes misguided. [8]

The Council of Europe's Commissioner for Human Rights has issued a statement drawing attention to the fundamental rights implications of Europe's fast-track extradition system, as they called it. The statement refers to Fair Trials International's cases and campaign for reform.

The Commissioner for Human Rights said:

"The EAW has been used in cases for which it was not intended, sometimes with harsh consequences on the lives of the persons concerned. It is thus high time to reform a system that affects thousands of persons every year." [9]

Catherine Heard, Head of Policy at Fair Trials International, said:

"At Fair Trials International we have seen the lives and futures of many ordinary people - teachers, firemen, chefs and students - blighted by the European arrest warrant, a system that infringes basic rights and fails to deliver a fair and efficient extradition system. We are delighted that the Commissioner has spoken out about the urgent need for stronger safeguards." [8]

Since its introduction, the European arrest warrant has led to serious cases of injustice including extradition following grossly unfair trials, the disproportionate infringement of basic rights, the request for extradition of mistaken individuals and the refusal to remove unjust warrants. Fair Trials International has been leading the call for reform of this system which, in 2009, saw over 4,000 people surrendered to different EU countries. [8]

The Council of Europe refer to two clients of Fair Trials International: Andrew Symeou was extradited on the basis of evidence obtained by police brutality. He spent a year in horrendous prison conditions after being denied bail solely because he was a non-national. [8] Garry Mann, a former fireman, was extradited to serve a 2 year prison sentence imposed following a trial in Portugal in 2004, described by a UK court as "so unfair as to be incompatible with [his] right to a fair trial". [8]

Some warrants have been issued as a means of political pressure, and they are "traded" in diplomatic relations between the various countries, which is an abuse of this instrument and negative practice. [1] A known example for the political usage of the warrant is the current Prime Minister of Montenegro, Milo Đukanović, for which Italy has repeatedly issued and then withdrew EAW, due to participation in various financial frauds. [1]

## Cases of injustice

In this part the author will analyse cases that Fair Trials International had the opportunity to help during its existence. Fair Trials International was founded by lawyer Stephen Jakobi in 1992, and since then assisted around 500 individuals each year and provided assistance in approximately 50 cases at any one time. [8] Author of this paper, after reviewing many cases enlisted in the Fair Trials International website, strongly believes that they are a valuable and respectful reference regarding the subject of this paper. The work FTI does is considered as a respectful and reliable and is greatly appreciated by the European institutions, so taking that into account author does not see any possible weaknesses in using the approach of interpreting and concluding based on them. Based on FTI cases it

is possible to spot flaws and omissions EAW has. [10] [11]:

1. Edmond Arapi- In 2006, Edmond Arapi, 31, an Albanian who came legally to the United Kingdom in 2000 was convicted in his absence of a murder in Genoa, Italy and sentenced to 16 years. Arapi, who works as a chef in Leek, Staffordshire, was unaware of the case until he was arrested at Gatwick airport in 2009 on his return from a family holiday in Fier, Albania. He has only been out of the UK on two occasions since he first arrived and had never been to Genoa.

2. A 16 year old then, from the UK who had recently moved with his mother to Malta, was arrested and taken to a police station where he was questioned aggressively for over four hours, without a lawyer or other appropriate adult present.

3. Michael Turner Hungarian authorities sought the extradition of Michael Turner, a young British national from Dorset, and business partner Jason McGoldrick following the failure of their business venture in Budapest. Michael was extradited to Hungary under a European Arrest Warrant on 2 November 2009 and was held in a high security prison for four months.

4. Corinna Reid- In January 2007, Corinna Reid and her partner Robert Cormack went on holiday to Tenerife with their children, including their 18-month-old son Aiden. During the holiday, Aiden fell ill with bronchitis and died in the early hours of 12 January. The Spanish authorities issued European Arrest Warrants in September 2008, and both Corinna and Robert were arrested in Scotland in connection with the death of their child.

5. Teresa Daniels was extradited to serve a sentence for a closed Spanish case despite no evidence, on the basis of a European Arrest Warrant.

6. Deborah Dark was arrested and detained, first at gunpoint in Turkey, then in Spain and then in the UK to serve a prison sentence for a twenty-year old conviction, all because of a European Arrest Warrant.

7. Cornelis Disselkoe In June 2010, Poland issued a European Arrest Warrant against Cornelis on charges for which he had been held more than 10 years earlier.

8. Anthony Reynolds- a British national who had moved with his family to Spain, was arrested on drug charges in Tenerife in December 2006. Spanish police told Anthony that if he did not admit to the charges, his wife would be imprisoned and their one-year-old daughter taken into care. Anthony denied any involvement in the offences. Anthony was eventually released after spending almost four years in pre-trial detention.

Based on this cases author would like to highlight the following issues:

- unfair retention of passport and denial of right to family life
- limited consular aid
- pre-trial detention conditions
- unfair trial
- trial in absentia
- danger of placing complete confidence in the fair trial safeguards of requesting countries, merely on the basis that they are legally bound to comply with Article 6 ECHR.
- the need for legal representation in the issuing state.
- the need for the wide variation in standards of procedural rights protections across the EU to be taken into account in EAW proceedings.
- failure to state what the allegations were or explain why there was carried out a search

## Conclusion

Author believes that the question raised in this paper has constant relevance in the European Union. Proper Implementation of human rights requires collective effort, involving EU Member States as well as the EU Institutions and the deadline for achieving it is hard to determine. Foundations of the European Union are based on the universality of the human rights. In order to advocate for them outside European Union, at the international scene, EU must deal with its own issues, and must without exception sanction all violations of human rights on its soil.

Although it seems that the legal protection of the accused rights is extensive and covers a range of possible violations of human rights, after getting acquainted with only a few cases in practice, one gets a different impression. Despite the fact that human rights are protected by EU Charter and there is a wide range of rights in it, they are vague and very widely defined. [3] Moreover they don't offer anything new, they are based on precursor documents. Framework decision states that EAW should not be executed when it would violate fundamental rights, but it is a fact that person's human rights can't automatically be guaranteed. [3]

The very human rights are broadly defined and interpreted differently in the dependency of the practice of states, economic and social situation in the country and so on. Some countries that are otherwise committed to respect for human rights, for a long time refused to regulate these rights better. As the issue of extradition is directly linked to the issue of sovereignty of the states, they want to leave a wider field of action in these matters, and this leads to a different interpretation, that interpretation on a case by case basis. Especially

complicated are the cases in which includes domestic citizens and when a person is charged with terrorism. In such cases, the violations of human rights are most common. After 9/11, the United States and leading European countries, but also many countries in transition were forced to step up the legislative aspect of the fight against terrorism and international level. EAW is a tool to manipulate and a lot of it is used in area of a political purpose.

We can identify two levels of human rights violations

- Light violations, when it comes to violations of human rights such as the right to respect for family and private life
- Severe, where evidence was gathered by torture, or contempt of court procedures.

Less common are severe cases of human rights violations but much more present in the media and the public.

The author believes that EAW provides much more benefit than harm, and that there is room for improvement. The solution is considered to more accurately define the rules and procedures of implementing EAW also would be desirable to define more precisely the limits of implementation. The adoption in 2010 of an EU directive on the right to interpretation and translation in criminal proceedings represents a step in the right direction and also The EU's Stockholm programme promises another look at the EAW in order to make proposals, where appropriate, "to increase efficiency and legal protection for individuals in the process of surrender". [12] A step forward has been made in the area of pre-trials despite limited enthusiasm from Member States when the European Commission launched a consultation in 2011. But with the European Court of Human Rights issuing pilot judgments criticising the excessive number of pre-

trial detainees in some EU prisons, it is unsurprising to find courts now refusing extradition to these countries (we had earlier warned of this risk to mutual trust). [12]The European Parliament has long backed action in this area (calling for action back in 2011), as have experts from Spain, Poland, Hungary, Greece, Lithuania and France, and the EU should now revisit the case for legislative action in this area. [12] Improving conditions and equalization standard in all Member States is another measure which would affect the improvement of EAW. However, these requirements are related with some other issues and which are complicated and will take a lot of time and money.

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