

EXECUTION OF EAW AND HUMAN RIGHTS

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***Abstract:** In this paper, the author deals with the problems surrounding execution of EAW in the field of human rights. The author, in the first part, states what kind of legal protection is offered by existing conventions and decisions, later in the paper she deals with actual protection in practice, and finally she reviews the practices. The aim is to see if EAW system provides more benefits than harm and what kind of reform is possible.*

***Key words:** EAW, human rights, Fair trials international, extradition*

1. 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. Significant changes have occurred with the creation of the European Union and they lead to the gradual transfer of some questions from national to the supranational level. Finally with the ratification of the Framework Decision of the European Commission in 2002nd on the European arrest warrant and the surrender procedures between Member States this issue was regulated uniformly in all Member States.¹

The European arrest warrant is 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.²

EAW improves and simplifies judicial procedures designed to surrender people for the purpose of conducting a criminal prosecution or executing a custodial sentence or spell in detention. Member State of execution (hereinafter “executing judicial authority”) shall refuse to execute the European arrest warrant in the following cases:

- Mandatory execution

1. if 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. if 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;

¹ Justice and Home Affairs of the European Union. 139-163

² IBID

3. if 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.

-Grounds for optional non-execution of the European arrest warrant³

2. FRAMEWORK DECISION

The EU document governing the operation of the EAW is the Council Framework Decision of 13 June 2002⁴. This was the first instrument to be adopted on the basis of the principle of mutual recognition of judicial decisions.

It came into force on 1 January 2004 and is founded on the principle of direct contacts between the judicial authorities.

In Chapter 1, under the General Principles, Article 1 it is said:

3. 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.⁵

3. LEGAL PROTECTION OF HUMAN RIGHTS

Additional legal protection is provided by two important documents. The first is the Treaty on European Union,⁶ or Maastricht Treaty, 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), 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.

Article 6 (ex Article 6 TEU) ⁷ states:

Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.⁸

4. THE ACTUAL PROTECTION OF THE RIGHTS

A person who is the subject of a European arrest warrant is protected both during the execution of the EAW in the state where he was arrested, as well as the requesting state, ie the state who ordered his arrest and extradition. On one side about his extradition court

³ IBID

⁴ 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=DD:19:03:32002F0584:HR:PDF>

⁶ *Official Journal C 191, 29 July 1992*

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:EN:PDF>

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:EN:PDF>

decides in two instances, one of which is usually the highest court in the State. His situation is also affected by guarantees which exist under the law of the state which will extradite him. Also, both countries are linked with bilateral agreement and other international instruments that have been ratified and are about fundamental human rights and freedoms. The Commission found that some countries (Denmark, Lithuania, Poland, Portugal) do not have defined certain rules of procedure which may lead to violation of the rights of the accused.

On the other hand 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. 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.⁹

Although the wording of the Framework Decision could have been clearer, Art. 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 by surrender be exposed to a real danger that his human rights might be violated, surrender should be refused. However, Framework Decisions have no direct effect; 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.

The problem with the implementation of the Framework Decision in Germany had, was because of human rights issue. The German Constitutional Court in 2005 put the law ineffective because it was inconsistent with the Constitution. The judgment notes that the law does not guarantee the procedural rights of the accused and his basic human rights.¹⁰ 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 allege 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 surrendered under an Arrest Warrant have to spend months or even years in detention before they can appear in court to establish their innocence¹¹ Sadly, our own casework repeatedly demonstrates the human cost of existing cooperation measures.

⁹ Justice and Home Affairs of the European Union 139-163

¹⁰ Justice and Home Affairs of the European Union. 139-163

¹¹ http://en.wikipedia.org/wiki/European_Arrest_Warrant

Under the European Arrest Warrant, for example, 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 our cases concern Europe, we also 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.¹²

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 – the European Arrest Warrant. 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.”*¹³

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.”

Since its introduction almost 8 years ago, 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.¹⁴

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. 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”.¹⁵

Fair Trials International has long campaigned for legislation at EU level on basic defence rights, because it is the only way to require Member States to deliver on their fair trial obligations, both to nationals and non-nationals. We use the real-life experiences of the people we assist to show the need for these measures.¹⁶

¹² <http://www.fairtrials.org/publications/policy-and-campaigns/fti-launches-justice-in-europe-campaign/>

¹³ http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=124

¹⁴ <http://www.fairtrials.org/press/human-rights-commissioner-raises-concerns-about-the-european-arrest-warrant/>

¹⁵ <http://www.fairtrials.org/press/human-rights-commissioner-raises-concerns-about-the-european-arrest-warrant/>

¹⁶ <http://www.fairtrials.org/press/human-rights-commissioner-raises-concerns-about-the-european-arrest-warrant/>

5. CASES OF INJUSTICE

Wanted for a crime he could not have committed – Edmond Arapi

Edmond's case highlights:

The 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.

Edmond Arapi was tried and convicted in his absence of killing Marcello Miguel Espana Castillo in Genoa, Italy in

October 2004. He was given a sentence of 19 years, later reduced to 16 years on appeal. Edmond had no idea that he was wanted for a crime or that the trial or appeal even took place. In fact, Edmond had not left the UK at all between the years of 2000 to 2006. On 26 October 2004, the day that Castillo was murdered in Genoa, Edmond was at work at Café Davide in Trentham, Staffordshire, UK and attending classes to gain a chef's qualification. Edmond was arrested in June 2009 at Gatwick Airport on an EAW from Italy, while he was on his way back from a family holiday in Albania. It was the first he knew of the charges against him in Italy.

There was a raft of contradictory expert evidence about whether Edmond would be entitled to a full retrial after extradition to Italy, and whether his alibi evidence (and the witnesses he would need to testify about his activities and whereabouts on the day of the murder) would be admitted at any trial. Appeals had been exhausted in Italy (again, without Edmond's knowledge – they were attended on his behalf by a public defence lawyer and the conviction had been upheld). It seemed far from clear that Italian law guaranteed a re-trial for defendants tried in absentia, where the conviction had been appealed. It was clear that Edmond risked being held for years on remand awaiting trial, as Italy has one of the worst records in Europe for delays in the justice system. Nevertheless, having heard conflicting evidence on Italian procedural law, the English court ordered his extradition on 9 April 2010.

FTI worked extensively on Edmond's case; attempting to persuade the Italian authorities to withdraw the EAW, working with Albanian lawyers to help establish the identity of the real perpetrator, and raising the profile of his case with the public and politicians. On 15 June 2010, the day the appeal against his extradition order was to be heard at the High Court, the Italian authorities decided to withdraw the EAW, admitting that they had sought Edmond in error. They provided information indicating that Edmond's fingerprints did not match those at the crime scene. If Edmond had been provided with legal representation in Italy from the outset, then the fact that he was the victim of mistaken identity could have been discovered much sooner. Edmond narrowly avoided being separated from his wife and children, including a newborn son, and spending months or years in an Italian prison awaiting a retrial.¹⁷

6. CONCLUSION

Reading about these cases and others like them, it's hard to believe that things like that could happen in EU and basically in democratic and regulated states. The author does not

¹⁷ http://www.fairtrials.org/documents/EAW_-_Cases_of_Injustice1.pdf

think only about the inhumane conditions in prisons but also the disregard of basic court procedures. In these cases, there are some serious violations of procedures. The practice is here to show us otherwise. As the main problem is the vaguely defined Framework Decision. This solution leads to a broad interpretation of the EAW and especially those articles related to the protection of human rights. 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.¹⁸ EAW is a tool to manipulate and a lot of it is used in are 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 sever 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. 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 that are complicated and will take a lot of time and money.

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