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**Respecting Human Rights during  
the Execution of the European Arrest Warrant**

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**Abstract:** In this paper we examine a topic in the field of European law, which is of particular interest, being always a novel subject, that is the protection and human rights within the complex activity of executing the European arrest warrant by the judicial authorities of each Member State. The paper continues previous research materialized in some studies and articles published in national or international specialized journals or proceedings. The examination of the European arrest warrant institution has led to some conclusions, which ultimately need to certify the completion of some provisions, notably the ones regarding the mutual recognition and increase of efficiency. The work can be useful both for practitioners and theorists in the field, the essential contribution consisting of the examination and the expressed critical opinions, which may lead to the amendment and completion of the European legislative act.

**Keywords:** protection; modification; addition; European legislative act

## **1. Introduction**

The establishment of the European Union, besides the indisputable advantages created to Member States at all levels of cooperation in the most diverse areas has determined a disadvantage as well, caused by the proliferation of crime, the difficulties involved in achieving an effective control of the competent bodies, that would lead to the reduction of crime, and especially the cross-border one.

In fact, a potential lack of reaction of the Member States can jeopardize the attainment of one of the important goals of the European Union, that is an area of freedom, security and justice.

The problem of judicial cooperation in criminal matters between Member States, notably simplifying the surrender procedure- receiving procedures of persons wanted for the execution of a sentence or to be subject to legal proceedings has represented a constant concern for the European institutions, that is the reason why the existing legislation was modified and adapted to the new requirements imposed by the successive developments in crime.

In this context, the Framework Decision 2002/584/JHA adopted a new institution designed to replace extradition, which is the European arrest warrant.

As a relatively new form of cooperation in criminal matters between Member States, the European arrest warrant was a permanent research object for many authors in the European Union, including in Romania (I. Rusu, Al. Boroi, F.R. Radu, G. Stroe etc.), the institution itself being investigated and by us as well in other papers published in journals, proceedings of conferences and university courses.

After entering into force of the European legislative act in question, the research conducted and the legal practice revealed some flaws mostly related to some complicated procedures and the right of the persons that are subject to such proceedings.

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As regards insuring the protection of rights of persons subject to a European arrest warrant, during the identification procedures and subsequently after trial and surrender procedure, the legal practice, sometimes supplemented by Romanian or European doctrine, particularly by the decisions of European Court of Human Rights, revealed some shortcomings, which finally have led to the violations of fundamental human rights.

The importance of respecting the fundamental rights is mentioned in the provisions of article 67 paragraph (1) of the Treaty on functioning the European Union, as amended and supplemented by the Lisbon Treaty, which states that “*The Union shall represent an area of freedom, security and justice with by complying the fundamental rights and the various systems and legal traditions of Member States*”.

In this study we examine the institution of the European arrest warrant in terms of execution, in the context of the need to respect the right of the accused to be present at the trial where there was taken a court decision against the person, a deprivation of liberty measure. Also, the conducted research is geared towards identifying other provisions that hinder the surrender of a person under a European arrest warrant, in order to improve the European legislation in the field by the amendment of some existing laws.

## **2. The European Arrest Warrant in the Current Context - Concept and Characterization**

The establishment of a European arrest warrant has been a necessity in crime proliferation and simplifications of procedures between Member States of persons convicted or against whom there were applied criminal proceedings.

In the doctrine there has been argued that “the practice of EU Member States has shown that the simple reconsideration of traditional principles in extradition matters is a cumbersome approach, which faces the opposition of states, and it is unable to provide effective and rapid solutions in the international judicial cooperation in criminal matters. Under these conditions it is taken advantage of the new cooperation instruments introduced by the Treaty of Amsterdam in Pillar III, by a framework decision where it was completely reformed the delivery mechanism of a person within the territory of a Member State at the request of the judicial authorities of a State Member”. (Streteanu, 2008, p. 2)

In another opinion it is stated that “*on the arrest warrant mentioned the EU strategy by the 28 Recommendation in the prevention and control of organized crime, which provided possibilities of creating, on the long term, a European legal area of extradition and to examine in this context the issue of extradition under the procedures by contumacy (lack) in full respect of fundamental rights guaranteed by the European Convention on Human Rights.*” (Stroe, 2007, p. 281)

In our opinion the major event that caused arguably the adoption of the European arrest warrant is the terrorist attacks of September 11, 2001 in United States of America. In this context, the institution of the European arrest warrant was introduced by the Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States.

The European legislative act provides in article 1 line (1) that “*the European arrest warrant is a judicial decision issued by a Member State in order to arrest and surrender by another Member State of a wanted person, for prosecution or executing a sentence or security measure involving deprivation of liberty*”.

After adopting these regulations, all Member States, including Romania, have promoted their own internal laws, designed to transpose the European legislation internally.

What characterizes the institution of the European arrest warrant, and also differentiates it from extradition, is the wide range of established novelties in order to simplify concretely and directly all administrative and judicial procedures. Among the innovations introduced by the European legislative

act, compared to the extradition institution, note: the obligation of Member States to apply the depositions of the European legislative act, widening the scope by including new types of offenses, most of the increased gravity; giving up to the verification procedure of double incrimination for certain categories of crimes, usually considered as being more serious; simplifying the procedures and shortening deadlines; simplifying the administrative phase; the possibility to surrender their citizens, subject to certain conditions; the possibility and recommendation of direct collaboration between the institutions of law enforcement. We appreciate that the level of European Union, Framework Decision 2002/584/JHA of 13 June 2002, represents one of the most important European legislative acts, by its execution there will be achieved important steps in the complex work of preventing and combating crime of all kinds.

## **2. Mandatory and Optional Reasons for the Refusal of Enforcing the European Arrest Warrant**

The EU Member States, within the activity of international criminal judicial cooperation activity can invoke some reasons for not executing the European arrest warrant. These reasons, according to their importance, may be mandatory or optional.

Thus, the judicial authority of the executing Member State may refuse to execute a European arrest warrant, in one of the following cases:

- the offense underlying the European arrest warrant is covered by amnesty in the executing Member State, when that State would have jurisdiction to prosecute the offense under its criminal law;
- when from the information available to the executing judicial authority it results that the wanted person has been finally judged by a Member State for the same acts, under the condition that in case of conviction, the sentence is executed or at that time it was executed or may no longer be executed under the law of the convicting Member State;
- when the person who is the subject of European arrest warrant cannot, because of the age, be held criminally responsible for the acts on which the warrant was released, under the law of the executing Member State.

In addition to mandatory reasons mentioned above, the European legislative act provides some optional grounds for refusal of executing the warrant, which can be invoked by the executing Member State, namely:

- act which lays at the basis of European arrest warrant which is not an offense under the law of the executing Member State;
- when the person subject to the warrant is being prosecuted in the executing Member State for the same act underlying the European Arrest Warrant;
- when the judicial authorities of the executing Member State have decided not to prosecute for the offense on which the European arrest warrant was released or to terminate it, or when the wanted person has been the subject to a final judgment in a Member State for the same facts which prevents further proceedings;
- When the prosecution or punishment was established under the law enforcement of the Member State and the facts are within the competence of that State, under its criminal law;
- When from the information available to the executing judicial authority it results that the requested person was finally judged for the same acts of a third country, under the condition that in case of conviction, the sentence was executed or was under execution at that time or may no longer be executed under the law of the sentencing country;
- When the European arrest warrant was issued for a penalty or a deprivation of liberty measure, when the wanted person is staying in the executing Member State, as a national or resident thereof, and that State undertakes to execute the sentence or security measure in accordance with the national law;
- When the European arrest warrant relates to offenses which:

- in accordance with the executing Member State's law, there have been committed wholly or partly within the executing Member State or in a place considered as such;
- were committed outside the territory of the issuing Member State, and executing Member State's law does not allow the prosecution for the same crimes committed outside its territory.

### **3. Refusal to Execute the European Arrest Warrant on Grounds of Violating the Rights of the Person in Question**

So, the general rule established by the European legislative act is that, any person against whom there are initiated court activities it may be surrendered to another Member State upon the request of its judicial authorities. However, some exceptions have been provided, which after being invoked, can lead to the refusal of executing the European arrest warrant by the judicial authorities of the executing Member State. Among these mandatory or optional reasons for non-compliance, provided by the European legislative act, note the following: the offense underlying the mandate is covered by amnesty in the executing Member State; the wanted person has been finally judged in another Member State for the same acts under the condition that, in case of sentencing, the sanction would be executed or under execution or it can no longer be enforced under the law of the convicting state; the person in question cannot, because of its age, be held criminally responsible for the facts in this warrant, under the convicting Member State's law, the person subject to the warrant is being prosecuted in the executing Member State for the same act underlying the warrant etc.

After the examination of the mandatory or optional reasons that can be invoked by the executing Member State to refuse the execution of a European arrest warrant, we find that they relate to the rights of the person subject to the warrant; in other words, when the judicial authorities of the Member State enforcement finds that those rights were not respected, it will refuse to execute the European arrest warrant.

After the entry into force of the European legislative act, the research undertaken in this area, both internally (to which we have made our contribution as well) and at European Union level, revealed the existence of some flaws related to insuring the protection rights of people covered by the European legal proceedings. Moreover, these imperfections have been found also by the European Court of Human Rights, adopting some decisions in favor of the people who have been submitted to a European arrest warrant.

Under these circumstances, it was necessary to complete and modify the European legislative act, in the sense of providing in its content the accused person's right to be present in person at trial including the right to a fair trial according to article 6 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights. At the same time, we consider the fact that on this issue, the Court held that the accused person's right to be present in person at the trial is not absolute and that, under certain conditions, it can give up, the free and willing by anyone expressly or impliedly, but clearly, this right.

By adopting the framework decision 2009/299/JAI of the Council of 26 February 2009, there were included other reasons for refusal of including the execution of European arrest warrant, reasons that regard, this time directly respecting the right of individuals to a fair trial according to article 6 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights. Thus, according to article 4a of Framework Decision 2002/584/JHA, as supplemented by the mentioned above legislative act, "*executing judicial authority may also refuse, to execute the European arrest warrant issued for the execution of a sentence or a measure involving deprivation of freedom, where the person was not present in person at the trial where the decision was passed...*"

So the general rule imposed legally this time is that when executing a European arrest warrant issued for a penalty or other deprivation of liberty measure, the person in question must be present at its trial.

When the person calls for retrial or appeal to an appeal, the executing Member State must ensure these rights.

Also, the European legislator has provided for some exceptions, on the possibility that the person concerned is not present at its trial, exceptions relating to specific situations that are seen frequently in the legal practice. These include the following situations: the person has been summoned in person on the date and place of the trial which led to the decision, or by other means where it actually received the data, issues that clearly establish that the person was aware of the trial, and was informed that a decision may be issued, if not for the trial, or when determined to have knowledge of the issue hiring a lawyer to defend at the trial, the defendant has exercised the powers specifically so.

The research leads to the conclusion that these changes and additions to the European legislative act, have corrected some previous provisions, which finally led to better ensure the protection of surrender personal rights, the current regulations is certainly improvable.

#### 4. Conclusions

The analysis highlights that the European institution of the European arrest warrant is currently the most important form of judicial cooperation in criminal matters within the European Union. In this context, the execution of a European arrest warrant must be carried out only in full accordance with article 6 of the European Convention on Human Rights. Research and critical remarks doctrine promoted both by us and by other authors in the country and other EU countries, supplemented by the judgments of the European Court of Human Rights, determined the European legislator to adopt a series of changes and additions that have meant to strengthen the rights of persons subject to such proceedings.

However, the conducted research demonstrates that there are still many provisions to be amended and supplemented, which will be subject to further research. Thus, the further research that we will undertake will cover the following aspects: strengthening the rights of persons subject to the execution of European arrest warrant, further simplification of procedures for surrender of persons under the European arrest warrant, obligation of retrial processes where there have been decided the conviction in absentia of the person convicted and broadening the applicability of the European arrest warrant and other offenses including, without the verification of double incrimination and recognition and enforcement of judicial decisions that impose criminal penalties in the context of freedom to protect the individuals concerned.

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\*\*\*Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States, published in the Official Journal L 190/2002.

\*\*\*2009/299/JAI Council Framework Decision of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, to strengthen the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person at the trial, published in the Official Journal of the European Union L81/24 of 27.03.2009.

\*\*\**Lisbon Treaty came into force on December 1, 2009.*

\*\*\**Treaty on functioning the European Union.*