







International Cooperation in EU Pre-Trial Investigations and Its Future Role in Ukraine's Legal Reform

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Abstract

This article examines international cooperation between law enforcement agencies within the European Union (EU) during pre-trial investigations, guided by the Association Agreement between Ukraine and the EU. Special focus is placed on the European Arrest Warrant (EAW), analyzing its application, efficiency, and implications for Ukraine's prospective EU membership. The study emphasizes the need for Ukraine to align its legal framework with EU standards, considering the issuance and execution of EAWs. As Ukraine aims to become an EU member state, it must understand and comply with the procedures and best practices associated with these warrants. Despite the existing legal frameworks, challenges remain due to the lack of consistent practice across EU countries in issuing and executing the EAW. This research

identifies key areas where Ukraine can improve its legal reforms to align with EU practices, particularly concerning EAW implementation. Recommendations include a detailed analysis of the EAW application process that accounts for the nuances of national legislation while adhering to EU regulations. By understanding these complexities and bridging legal gaps, Ukraine can effectively navigate the challenges and enhance international cooperation in criminal investigations. Ultimately, this article provides practical insights and policy recommendations to ensure Ukraine's successful integration into the EU's legal framework for pre-trial investigations. It highlights the importance of adopting best practices in the issuance and execution of the EAW, emphasizing the need for legal reforms that respect national peculiarities without contravening EU law.

Keywords *Procedural Actions, Pre-Trial Investigation, Legal Cooperation, Organized Crime, Arrest Warrant*

Introduction

Ukraine and the European Union (EU), by the EU-Ukraine Association Agreement¹, intend to strengthen legal cooperation, including in the issuance and provision of legal assistance in criminal proceedings, including the detection, seizure, confiscation, and return of property obtained as a result of criminal activity," the statement of Agreement on the Association of Ukraine-EU² said. In line with this goal, Ukraine today continues to develop and deepen cooperation between the competent law enforcement agencies of Ukraine and the

¹ European Union. *Association Agreement Between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part*. 2014. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29>. See also Odysseas Spiliopoulos, "The EU-Ukraine association agreement as a framework of integration between the two parties." *Procedia Economics and Finance* 9 (2014): 256-263; Rilka Dragneva, and Kataryna Wolczuk. "The EU-Ukraine association agreement and the challenges of inter-regionalism." *Review of Central and East European Law* 39, no. 3-4 (2014): 213-244.

² European Union. *Association Agreement Between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part*.

countries of the European Union. The agreement, which aims to implement practical measures in the field of crime prevention and counteraction, was supposed to intensify cooperation, but against the background of reduced bilateral relations, it is perceived more as a declaration than a basis for objective preconditions for implementing cooperation in practice.

However, despite the high degree of foreign policy debate, the modern world community is no longer influenced by the latest manifestations of new forms of crime, but by the large-scale threat that has resulted in the rapid development of international terrorism and organized crime, both on the European continent and in transatlantic. These circumstances lead to the fact that building an effective system of cooperation between states in the fight against crime is not enough to consolidate several declarative conclusions and declare declarations of intent. The implementation of certain procedural mechanisms comes to the fore, which should become the relevant elements of the system of interaction between states, which is aimed primarily at overcoming the problem of global terrorism and transnational crime^{3 4}.

In the framework of the Council of Europe, there must be the states' cooperation mechanism for fighting crime, within which a set of conventions governing the provision of legal assistance in criminal matters, the issue of extradition; codification of certain transnational crimes was carried out; created several working law enforcement agencies. As A.R. Kaiumova⁵ rightly points out, the experience of such an organization as the European Union is extremely important for building an effective system of anti-crime measures, because integration processes within this form allow us to talk about creating a single "*European space of freedom, security and justice*". The authors define that "*the mechanisms created in the EU represent a fairly high level of interaction*

³ Oleg M. Yaroshenko, et al. "Commercial Secret as an Object of Labour Relations: Foreign and International Experience." *Journal of Legal, Ethical and Regulatory Issues* 21 (2018): 1-10.

⁴ Serhii Kozlovskiy, et al. "Management and comprehensive assessment of the probability of bankruptcy of Ukrainian enterprises based on the methods of fuzzy sets theory." *Problems and Perspectives in Management* 17, no. 3 (2019): 370-381.

⁵ A. R. Kaiumova, "Mechanisms of the Criminal Jurisdiction Implementation by the EU Countries Within the Framework of the Creation of an Area of Freedom, Security and Justice." *International Public and Private Law* 4 (2005): 46-52.

*between states and can serve as a model for other European states and subregional associations"*⁶.

Accordingly, the aspirations of states aimed at creating and developing new institutions, which will take into account all the features of modern forms of crime, along with doctrinal developments, contribute to the sustainable development of interstate cooperation. The EU legal system takes a central place in the above process. Within the framework of this regional entity, there is a continuous enhancement of the regulatory basis governing the cooperation and interaction between participating countries in combating criminal encroachment. Hence, these social relations were the subject of joint competence of the EU and its member states for a while—"Area of Freedom, Security, and Justice."^{7 8}.

Thus, it is not the changes in the organizational structure of cooperation between the EU member states that attract attention, but the modification of the basic ideas that underlie it. The result of these transformations was the principle of mutual recognition of sentences and judgments consolidated in the EU legal space. The principle provided for the automatic recognition of judicial acts rendered in criminal proceedings by all EU Member States. The provisions of the said principle formed the basis for the institutions of the European arrest warrant as well as the warrant for procedural investigative actions.

The authors of this article carried out a thorough analysis of the issues under the study. Thus, a systematic method allowed for studying the status of procedural actions in the pre-trial investigation in Ukraine and the EU. Historical and comparative methods helped to analyze the legal framework for the pre-trial investigation in the EU countries to determine the most effective ways to carry out this work and establish the possibility of their use in modern conditions. The authors of this article used the statistical method to collect and analyze empirical data

⁶ Kaiumova.

⁷ Andrejus Novikovas, et al. "The peculiarities of motivation and organization of civil defence service in Lithuania and Ukraine." *Journal of Security & Sustainability Issues* 7, no. 2 (2017). 369-380.

⁸ Kaiumova, "Mechanisms of the Criminal Jurisdiction Implementation by the EU Countries Within the Framework of the Creation of an Area of Freedom, Security and Justice."

on the state of practice of improving the efficiency of procedural actions and confirm the representativeness of the conclusions.

Despite the specifics of EU integration ties, certain elements of the reformed system of cooperation of member states can be used to improve cooperation between Ukraine and post-Soviet countries, for example, in the framework of the EU-Ukraine Association Agreement⁹, or become a basis for modifying existing mechanisms of international cooperation the legal system of our state.

Results and Discussion

Today, the issue of international cooperation in the field of criminal law is relevant, the goal of which is to create a space of freedom, peace, security, and justice. An efficient and effective mechanism of such cooperation is the European Arrest Warrant. With the help of this tool, in every specific case, the inevitability of criminal responsibility and punishment of the person who committed the offense is ensured.

The European arrest warrant is one of the most important blocks of reforming the system of international cooperation in the criminal law field, which is based on the principle of mutual recognition of court decisions. But its application as an important legal instrument faced several problems, primarily of a practical nature. This issue is quite unexplored at the scientific level and needs theoretical improvement and specification for further implementation.

In general, the European arrest warrant is an instrument of international judicial cooperation in criminal matters, which, by replacing all provisions on extradition in relations between the member states of the European Union, introduces an innovative procedure for the extradition of persons to whom preventive measures or punishments are to be applied. The ultimate goal of this tool is to facilitate the extradition of persons wanted in the European Area. This agreement is dictated by the need to deal with transnational criminal phenomena and is part of the ever-expanding cooperation in criminal matters between the Member States of the European Union.

⁹ European Union. *Association Agreement Between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part.*

A European Arrest Warrant is defined as "a judicial decision issued by a Member State of the European Union to arrest and extradite a person to another Member State to prosecute him in a criminal case or to execute a sentence of imprisonment or a warrant for detention"¹⁰.

The European Arrest Warrant (EAW) does not apply to trivial offenses and must be used by the principle of proportionality. National authorities must assess the seriousness of the offense, the length of the sentence, and the cost-benefit ratio before issuing a warrant. It can be issued if the wanted person is accused of committing a crime punishable by at least one year of imprisonment, or, in the case of an already pronounced sentence, if it provides for a minimum punishment of at least four years of imprisonment.

The decision whether or not to extradite a person based on a European Arrest Warrant is a purely judicial matter for the Court of Appeal in the district in which the accused or convicted person is domiciled, registered, or registered at the time of the arrest warrant, or other judicial authority having jurisdiction to act regarding the European Arrest Warrant.

A prerequisite for taking into custody is the presence of a foreign court decision, based on which an EAW is issued, which must consist, alternatively, of an irrevocable conviction or a protective order signed by a judge and with reasons. Based on this court decision, the judicial body of the issuing state must send a request to the EEA¹¹.

The European Arrest Warrant¹² (Council of the European Union, 2002) is designed to replace the previous extradition procedure and support cooperation between the judicial authorities of the member states. In October 1999, the European Council at its meeting in Tampere formulated the final concept of mutual recognition of court

¹⁰ V. V. Zuev, "Harmonization of the Criminal Procedural Legislation of Ukraine on the Extradition of a Person in Criminal Proceedings with the Standards of the International Criminal Court." *Criminal Procedure and Criminology: Forensic Examination. Lawyer of Ukraine* 1 (2018): 55-61.

¹¹ M. I. Traskevych, "European Arrest Warrant." *Bulletin of the Vasyl Stus DonNU Student Scientific Society* 1, no. 12 (2020): 99-105

¹² Council of the European Union. *Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States*. 2002. Retrieved from https://eclan.eu/files/attachments/.1693/en_2.pdf.

decisions. The Council regarded this concept as a "cornerstone of legal cooperation in civil and criminal matters"¹³. The program of measures¹⁴ was adopted in January 2001; its purpose was to further ensure compliance with the principle of mutual recognition of court decisions in criminal proceedings. The essence of this principle is that a court decision rendered in one EU member state is subject to automatic recognition and enforcement in another. In addition, the execution of foreign court decisions regarding several crimes (for example, terrorism, human trafficking, corruption, forgery, murder, etc.) is carried out without taking into account the principle of double criminal liability, provided that in the requested state such actions are criminally liable with the limitation of freedom of term of at least three years.

The European Arrest Warrant requires a certain time frame in terms of its execution, but the extradition procedure does not. Thus, after the arrest of the suspects, the final issue of their extradition is decided by the court within 60 days from the moment of arrest, in exceptional cases up to 90 days. If the detainee consents to extradition, such a decision is made within 10 days from the moment of receipt of the consent.

At the same time, Eurojust¹⁵ recorded 116 violations of the procedure for deciding on the execution of a European arrest warrant. Article 3 of the Framework Decision of the Council¹⁶ provides that the court of the requested state must refuse to extradite the suspect in the following cases:

¹³ European Council. *Tampere European Council 15-16 October 1999: Presidency Conclusions*. 1999. Retrieved from https://www.europarl.europa.eu/summits/tam_en.htm#c.

¹⁴ European Commission. *Commission Staff Working Document: Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2018*. 2020. Retrieved from https://ec.europa.eu/info/sites/info/files/swd_2020_127_f1_v1_en.pdf.

¹⁵ Eurojust. *Eurojust Annual Report*. 2001. Retrieved from <https://www.eurojust.europa.eu/eurojust-annual-report-2011-0>.

¹⁶ Council of the European Union. *Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States*. 2002. Retrieved from https://eclan.eu/files/attachments/.1693/en_2.pdf.

- 1) if the crime that is the basis for issuing the warrant is subject to amnesty, provided that the state executing the warrant had the right to bring the crime to justice;
- 2) if the court has issued an arrest warrant against a person who has already been convicted of the same crime;
- 3) if the person against whom the arrest warrant has been issued cannot be prosecuted under the laws of the requested state due to his age.

In addition, the Framework Decision of the Council¹⁷ does not allow the transfer of a person in the event of a threat of a significant violation of the fundamental rights of the transferred person: if the warrant was issued to prosecute or punish the person based on his gender, race, religion, ethnic origin, orientation or that the position of the said person in connection with any of these motives may be prejudiced, as well as if there is a serious threat to the person of the death penalty, torture or other inhuman or degrading treatment or punishment.

The scope of the European Arrest Warrant¹⁸, enshrined in the Framework Decision, is quite broad: practically any type of crime can be formally the basis for issuing a warrant. Therefore, when deciding on the issue of issuing a European arrest warrant, in each specific case the court must decide on the feasibility of this procedure. In practice, judges often limited themselves to establishing the legal basis for issuing a warrant, without addressing the issue of expediency. As a result, situations arose when a European arrest warrant was issued for a person who had committed a "minor offense". In this regard, the European Commission called on national courts to ensure compliance with the principle of proportionality when deciding to issue a European arrest warrant: the decision to issue a European arrest warrant must be proportional to the gravity of the crime and the degree of the crime. public danger. cases when there is a real and justified need. Otherwise, courts may use other mechanisms without issuing an arrest warrant.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

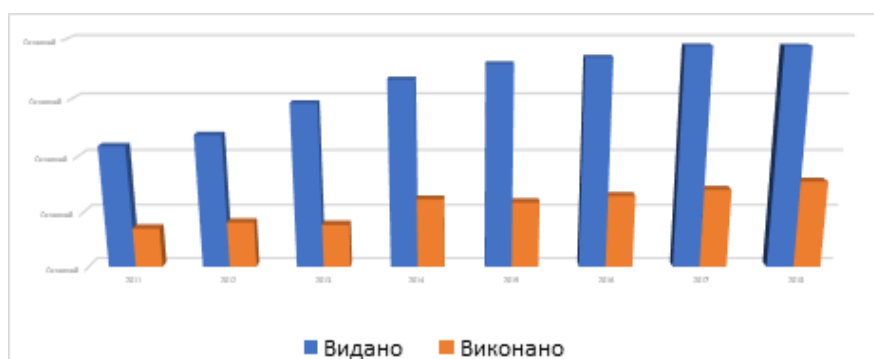


FIGURE 1. The correlation between the issued and implemented European arrest warrants

Source: developed by the authors based on the European Commission (2020).

It should be noted that the issuance of the European arrest warrant is gaining momentum, which indicates the effectiveness of this tool. Thus, statistics show (Figure 1) that over the period from 2011 to 2018, the issuance of orders and, accordingly, their fulfillment doubled. In particular, in 2011, courts issued 9,784 (of which 3,154 were executed) arrest warrants, in 2012 – 10,665 (of which 3,652 were executed); in 2013, 13,142 (of which 3,467 were completed); In 2014, 14,948 (of which 5,535 were executed); In 2015, 16,144 (of which 5,304 were completed); In 2016, 16,636 (of which 5,812 were completed); 2017 - 17,491 (of which 6,317 were completed); In 2018, -17,471 (of which 6,976 completed), which is shown in the chart above. Most arrest warrants were issued in Poland, Germany, and France. However, despite the increase in the number of arrest warrants issued, the percentage of their execution remains relatively low: between 2011 and 2018, only 22% of arrest warrants were executed on average¹⁹. However, it should be noted that in some countries (for example, Denmark, and Sweden), the decision to transfer a person to a foreign state is made not by a court, but by the Ministry of Justice, which contradicts the concept of a European warrant.

¹⁹ European Commission. *Programme of Measures to Implement the Principle of Mutual Recognition of Decisions in Criminal Matters*. 2001. Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001Y0115\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001Y0115(02)&from=EN).

Thus, extradition is an important area of international cooperation in the field of criminal law. In the European Union, to simplify the complex political and administrative extradition procedure and replace it with a more effective mechanism for the implementation of classic relations of cooperation—the transfer of persons between judicial authorities, there is a European arrest warrant. The legal basis for its introduction into legal circulation is the Framework Decision of the European Council dated June 13, 2002.²⁰

Having analyzed the provisions of this decision, we can conclude that the European arrest warrant is the most essential form of cooperation in the field of justice, a concrete and real embodiment in the criminal law field of the principle of mutual recognition and freedom of movement of court decisions in criminal cases. The essence of mutual recognition of court decisions is that a court decision made in one European Union member state is automatically recognized and enforced in another.

The fundamental basis for the functioning of this instrument of cooperation is the increased degree of trust and interaction between the member states. But at the same time, it is worth noting that the Framework Decision does not affect the use by EU member states of extradition provisions, which are defined by international treaties in relations with other non-EU states.

The Framework Decision contains a definition according to which a European Arrest Warrant is "*a judicial decision issued by a Member State to detain and hand over to another Member State a wanted person for criminal prosecution or the execution of a sentence or security measures related to deprivation of liberty*". It is also stated that it is a simple document containing the name and nationality of the wanted person, confirmation of the existence of a valid court decision against this person, the nature and legal qualification of the crime, its description, and the corresponding punishments to be applied, as well as information about the judicial the authority that issued the warrant²¹.

²⁰ Verkhovna Rada of Ukraine. *Council Framework Decision of 13 June 2002 on the European Arrest Warrant and Procedures for the Transfer of Offenders Between Member States (2002/584/JHA)*. 2002. Retrieved from https://zakon.rada.gov.ua/laws/show/994_b17#Text.

²¹ Iryna Kaminska, "The Judicial System of the European Union." *Krakowskie Studia Małopolskie* 3 (2021): 10-31. See also Koen Lenaerts, "The Rule of Law and the

The main subjects of the European Arrest Warrant are the authority that issues the warrant and the authority that executes the warrant. The judicial body of a member state of the European Union, competent for this by national law, is entrusted with the framework decision to perform the specified functions. Other authorities can only carry out duties to assist the court in the exercise of powers regarding the European Arrest Warrant, in particular, such as receiving and sending warrants. At the same time, each EU member state has the right to independently determine in its domestic law which judicial bodies to grant such powers.

But in practice, not all countries of the European Union issued a warrant. In some countries, prosecutors have this authority. In this context, the High Court of London noted: "It cannot be said that the term judicial refers only to the judge who makes the decision. Others, including prosecutors, may be included in this term for various purposes. This is fully consistent with the principles of mutual recognition and mutual trust to recognize as valid an EAW issued by a prosecuting authority designated under Article 6 of the Framework Decision." The Supreme Court of the United Kingdom also supported this position²². In Germany, such a body is an extrajudicial body represented by the Prosecutor General at the Supreme Court of Germany, who has the right to preliminarily decide on the admissibility of the extradition of a persecuted person, as well as to express consent to extradition. So, we can conclude that in the issue of who is the subject of issues, and executing an arrest warrant, competence is agreed upon depending on the criminal legal system of the member state of the European Union, its features, and countries adapt and interpret the Framework Decision by national law.

Given the above, we consider it necessary, to specify and improve the definition, to amend Part 1 of Article 1 of the Framework Decision.

Coherence of the Judicial System of the European Union." *Common Market Law Review* 44, no. 6 (2007): 1625-1659; Alan Dashwood, and Angus C. Johnston, eds. *The future of the judicial system of the European Union*. (London: Hart Publishing, 2001).

²² A. Mazaraki, T. Melnyk, S. Melnychenko, L. Kudyrko, T. Lositska, and K. Pugachevska. "Import Substitution Potential in the Conditions of Digital Transformation." *Kharkiv: PC Technology Center*, 164. doi: <http://doi.org/10.15587/978-617-7319-51-0>

to carry out criminal prosecution or to carry out punishment or security measures related to deprivation of liberty²³.

To effectively study the legal nature and clarify the positive and negative aspects of the application of the European arrest warrant, we consider it necessary to compare the specified instrument of international cooperation with extradition.

One of the distinguishing features is the introduction of the term "*transfer*" into legal circulation. In the Framework Decision, the classical term "*extradition*" is replaced by the term "transfer". That is, a new form of cooperation between states in the fight *against* crime has been introduced in the international legal sphere. Before this, the countries of the European Union carried out the transfer of the accused only to international courts, and the term "extradition" was not used in such a case. However, in the Framework Decision itself, "*extradition*" and "*transfer*" are used as synonyms. In our opinion, the literal interpretation of international legal norms allows us to conclude their different content and meaning.

Extradition should be understood only as the delivery by one state of a person who is on its territory to another state for criminal prosecution or execution of a sentence. And the transfer of a person is the delivery of a person by the state to an international body or institution of justice. Thus, the new term "surrender" in the context of the Framework Decision was introduced to emphasize the difference, improve and separate the European Arrest Warrant procedure from extradition. But in theory, the issue of definition is quite controversial, as some scientists equate the concepts of "extradition" and "handover" of a person in the extradition process²⁴.

The transfer of criminals from one EU member state to another based on a European Arrest Warrant has replaced the traditional extradition procedure. Before that, it was based on bilateral or multilateral agreements. Also, this decision establishes the direct and rapid issuance of arrest warrants between the competent judicial

²³ Otar Chubinidze, "Legal Regulation of Universal Jurisdiction in the European Union and Its Member States." *European and Comparative Law Journal* 10, no. 1 (2019): 22-27.

²⁴ Yu. V. Kharchenko, and S. O. Mazepa. "To the Issue of International Cooperation of Ukraine and Europol." *Scientific Activities of the Faculty of Law of the West Ukrainian National University* 1 (2021): 258-261.

authorities of the member states, replacing the complex and lengthy procedure of requests through diplomatic channels or ministries of justice with a limited role of justice authorities.

The classic extradition procedure requires an intergovernmental, interstate approach involving diplomatic channels. The European arrest warrant, in contrast, is based on direct contact between the judicial authorities. It is sent directly to the competent judicial department if the wanted person's whereabouts are known. Then the court establishes the identity of the arrested person and begins, together with the party that submitted the request, to prepare a decision on his transfer by warrant. If the criminal is in hiding, requests for his arrest and transfer are sent to the Schengen Information System and Interpol. The police receive these requests and, after detaining the wanted person, hand him over to the judicial department that issued the warrant. A special international network of translators is used to translate orders into the required language ²⁵.

You can get information about which agency accepts a European arrest warrant in a particular country of the European Union through the European Legal Network, created to facilitate criminal-legal cooperation. For example, ten special courts issue and review European arrest warrants in Great Britain. Given the above, we can conclude that, unlike extradition, decisions on transfer based on a European arrest warrant are made by national judicial authorities by the procedural legislation of the requested state, which makes this procedure faster, more efficient, and more specific.

Unlike the extradition procedure, which can last many months and even years, the execution of the European arrest warrant has specific time limits: after the arrest of a person, the final issue of his extradition is decided by the court within a period of no more than 60 days from the moment of arrest, in exceptional cases such a period can be extended up to 90 days. The State that requested the surrender of the person may send the European Warrant by electronic means of communication to the competent authorities of the State where the criminal is hiding. A

²⁵ Kai Ambos, "The German Public Prosecutor as (no) Judicial Authority within the Meaning of the European Arrest Warrant: A Case Note on the CJEU's Judgment in OG (C-508/18) and PI (C 82/19 PPU)." *New Journal of European Criminal Law* 10, no. 4 (2019): 399-407.

person who has committed a crime can be arrested immediately based on a European warrant. Within 48 hours, the person against whom the warrant was issued must appear in court. If the detained person consents to extradition, such a decision is made within 10 days of giving consent. It is worth noting that the introduction of the procedure for issuing a European Arrest Warrant made it possible to significantly accelerate the transfer of persons from one country to another.

Therefore, the European Arrest Warrant is subject to review and execution in the mode of special deadlines - implementation in the shortest possible time, on the day established by the agreement of the cooperating parties. This is both an advantage and a disadvantage. The positive aspect is that the procedure takes place without delay, quickly, in a short time. The negative aspect is the limitation of the term, in connection with which the priority is not the person and his rights, but the procedure itself, which is formal, since the guilt of the person in the commission of the crime to which the extradition procedure is applied is not fully investigated²⁶.

Instead, according to the extradition rules, an extradition request could wait for a year to be examined by a court, which subsequently went through two stages: the judicial stage, during which the extradition request was considered in court, and the political stage, when the final decision was made by the government or the head of state. The European Arrest Warrant procedure involves a single stage in which only the judiciary makes a decision. At the same time, this formulation of the question suggests that the court that decides the issue of extradition is also forced to decide the issue of a purely political nature.

The classic extradition procedure allowed the states of the European Union not to extradite a terrorist element, justifying the refusal by the political motives of the crime. The introduction of the European Arrest Warrant reduced this practice and became an effective and productive moment for international cooperation in the field of combating terrorism. Thus, in 2007, based on a warrant issued by a British court, it was possible to detain Hussein Osman, who was suspected of organizing an explosion in London in 2005: with the help

²⁶ Christian Kaunert, and Sarah Léonard. "The Collective Securitisation of Terrorism in the European Union." *West European Politics* 42, no. 2 (2019): 261-277.

of a European arrest warrant, the procedure of transferring the accused by Italy to Great Britain was carried out in an extremely short time. So, based on this example, we can state the fact that the European arrest warrant is an effective and operational tool in the fight against terrorism, and therefore has international significance and is important not only in the European space²⁷.

Another important distinguishing feature is the simplicity of the procedure for the transfer of a person who has committed a criminal act based on the European Arrest Warrant and also has a specific scope. When transferring such a person, his qualification for the commission of which the person is transferred is irrelevant, that is, the difference in the definition of the crime at the national level. According to the European arrest warrant, as in the case of extradition, a person is transferred for committing a crime punishable by imprisonment for the maximum term: not less than one year or the term of the prescribed punishment must be not less than four months. So, the sign of the simplicity of the procedure testifies to its democratic essence, accessibility, non-contradiction, and efficiency, as well as an easy and clear implementation mechanism.

A problematic aspect of the application of the European Arrest Warrant is the lack of a right not to extradite EU nationals. According to this warrant, there is a principle according to which all persons who have committed a crime and are citizens of the European Union states are responsible for the committed crimes before the EU courts. In this case, such a protection institution as political asylum does not exist within the European Union states. This is a violation of the European Convention on the Protection of Human Rights and Fundamental Freedoms of 1950²⁸.

Regarding the study of the problematic aspects of the application of the European arrest warrant for the development of the law of Ukraine, as a European integration state, it is necessary to point out such a legal feature of the European arrest warrant, as the fact that,

²⁷ Liesbet Hooghe, and Gary Marks. "Grand Theories of European Integration in the Twenty-First Century." *Journal of European Public Policy* 26, no. 8 (2019): 1113-1133.

²⁸ Council of Europe. *Convention on the Protection of Human Rights and Fundamental Freedoms*. 1950. Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

unlike Ukrainian legislation, the Framework Decision does not contain a ban on the transfer by EU states of their citizens. The only caveat in this aspect is that EU countries can enshrine in their domestic legislation, as a condition for the transfer of their citizen, the provision that after the participation of such a person in a court hearing, he must be sent back to his country of citizenship to serve the sentence²⁹.

According to Article 25 of the Constitution of Ukraine: "A citizen of Ukraine cannot be expelled from the borders of Ukraine or extradited to another state. Ukraine guarantees the care and protection of its citizens who are outside its borders." Part 1 of Article 10 of the Criminal Code of Ukraine contains the following provision: "Citizens of Ukraine who have committed crimes outside Ukraine cannot be extradited to a foreign state for criminal prosecution and trial"³⁰. That is, there is a direct ban on the extradition of Ukrainian citizens to another state, and the norm of the Criminal Code of Ukraine expands and specifies the norm established by the Constitution of Ukraine. Therefore, this legal provision is one of the obstacles to the likely implementation of the Framework Decision in Ukraine, as it contradicts the constitutional principle.

An illustrative example of solving the problem of implementation of the Framework Decision is the example of Germany, but it is more relevant for EU member states that have a similar legal system, and for Ukraine in the future. The implementation of the Framework Decision into German national law was carried out by the Law of July 21, 2004 "On the implementation of the Framework Decision on the European arrest warrant and extradition proceedings between EU member states". This law introduced corresponding changes in the national legislation, which violated the constitutional principle of the inadmissibility of extradition of one's citizens. The law implementing the Order into national law was appealed to the Federal Constitutional Tribunal by a Syrian citizen who also had German citizenship. He was suspected of belonging to a terrorist organization, for which a Warrant was issued by

²⁹ Reinhard Heinisch, Duncan McDonnell, and Annika Werner. "Equivocal Euroscepticism: How Populist Radical Right Parties Can Have Their EU Cake and Eat It." *JCMS: Journal of Common Market Studies* 59, no. 2 (2021): 189-205.

³⁰ Verkhovna Rada of Ukraine. *Constitution of Ukraine*. 1996. Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-бп#Text>.

Spain. The applicant believed that the law violated the fundamental rights guaranteed by German law, such as the right to personal freedom, equality before the law, the ban on the extradition of German citizens, and the right to appeal to the court for protection³¹.

After considering the complaint, the Constitutional Tribunal of Germany concluded that the law is unconstitutional, and called on the authorities to "correctly implement the rules of extradition based on the Warrant." The Constitutional Tribunal found that the law violated the constitutional principle of the personal freedom of a German citizen, which prohibits extradition, and the principle of the right of access to justice. The Constitutional Tribunal clarified that a German citizen should be protected from extradition if the crime was committed on German territory. In addition, the law did not include any grounds for refusing to execute the Warrant, so all possibilities for protecting the rights and legitimate interests of German citizens were not exhausted³². According to the Constitutional Tribunal of Germany, the procedure for the execution of the Warrant should be interpreted in the light of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which requires respect for the interests of the EU member states, which does not exclude the control of the national law of the state issuing the Warrant by the German authorities, in accordance to the principle of the rule of law. The warrant is an inappropriate legal instrument that does not take into account the national legal regulation of each of the EU member states.

Thus, it is necessary to clarify the reasons for the refusal to execute the Warrant, since the need to control the legislation of the requesting state was declared. The tribunal established the rule that the refusal to extradite one's citizens is not unconditional. As a result of the recognition of the law as unconstitutional, a new law was adopted, which provides for the protection of German citizens from extradition

³¹ André Klip, "European Criminal Law: An Integrative Approach." *Ius Communitatis* 2 (2021): 45-51

³² P. Lošonczi, I. Britchenko, and O. Sokolovska. "Analysis of the Main Threats to the System of Sustainable Development and Planning of the Region in the Context of Ensuring the Economic Security of the State." *International Journal of Sustainable Development and Planning* 17, no. 5 (2022): 1411-1416. <https://doi.org/10.18280/ijstdp.170504>.

in case of committing (at least partially) a crime on the territory of Germany. The extradition of a German citizen is possible on the condition that guarantees are provided to the requesting state that, in the event of a person being sentenced to a sentence that is being served, the convicted person, having expressed his consent, can be transferred back to Germany to serve the sentence.

Some EU member states also made changes to the national criminal procedural law, which allowed in some cases to extradite their citizens. For example, based on the decision of the Constitutional Tribunal of Poland, the provisions of the Polish Code of Criminal Procedure, which previously prohibited the extradition of one's citizens, became invalid. So, using the example of Germany, we can conclude that when implementing the Framework Decision into national law, it is necessary to take into account the peculiarities of internal criminal procedural law and legislation and the legal system of the state as a whole to avoid contradictions.

Conclusion

After analyzing the application of the European arrest warrant and examining its legal nature as an instrument of international cooperation, the following conclusions can be drawn. The European arrest warrant is an efficient and effective tool that has replaced the outdated and complex extradition procedure within the European Union.

The subject of extradition, the execution procedure, and the jurisdiction of the arrest warrant are determined based on the criminal legal system of each member state. Countries adapt and interpret the Framework Decision according to their national laws, and the decision to transfer a person under the European arrest warrant is made by national authorities through procedural legislation. This streamlined process ensures faster and more efficient execution.

To provide a clearer and improved definition, it is suggested to make changes to Article 1, Part 1 of the Framework Decision. The revised content would define the European arrest warrant as a decision issued by a judicial or extrajudicial body of a member state, to detain and transfer a wanted person for criminal prosecution, punishment execution, or security measures related to deprivation of liberty.

Compared to extradition, the European arrest warrant is subject to specific deadlines and is executed promptly, based on the agreed timeframe between cooperating parties. While this expedited process is advantageous, it also presents a limitation in terms of time, where the focus shifts more to the procedure itself rather than the person and their rights. The transfer procedure does not fully investigate the guilt of the person regarding the committed crime. Nevertheless, the European arrest warrant's simplicity, accessibility, non-contradiction, efficiency, and clear implementation mechanism highlight its democratic essence.

It should be noted that there are instances of violations when justifying decisions to refuse the execution of the arrest warrant. While all member states have incorporated the three mandatory grounds for refusal into their national legislation, many states attempt to provide additional grounds for refusal. Some states, for instance, avoid extraditing their citizens, citing concerns about potential rights violations. Thus, the European Investigation Order serves as an extension of mutual recognition and the traditional model of cooperation within the EU's freedom, security, and justice framework. The current model emphasizes flexibility, efficiency, and clarity in procedural forms.

However, contradictory provisions that remain unresolved have been identified through research. One such issue is the expansion of the executing state's procedural activities, which reduces the guarantees for the unconditional recognition of the requesting state's evidence. Addressing this matter will require closer cooperation among EU member states in future criminal cases. The authors of this article believe that harmonization and adaptation of national legislation should align with European legislation within the framework of the Association Agreement with the EU (European Union, 2014). This approach would deepen international cooperation in the field of criminal justice. For Ukraine, aspiring to become an EU member, a careful study and analysis of the European arrest warrant are necessary, taking into account national legislative peculiarities and compliance with EU requirements

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*“Laws are the sovereigns
of sovereigns.”*

Louis XIV

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