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Normative and Accessory Grounds for the Non-Execution of the European Arrest Warrant

The Tampere European Council supported the initiative on abolition formal, complex extradition procedure among the Member States of the European Union and replacement it by the simplified surrender procedure, which would be based on the principle of mutual trust and principle of mutual recognition of criminal decisions. For this purpose, the Council of the European Union adopted framework decision on the European arrest warrant and the surrender procedures between Member States, in 2002. Quasi-European extradition system has substantially changed surrender procedures between the EU member states, abolished restrictions regarding political offences, military offences, extradition of national, established extradition period and etc. Currently surrender procedures among the member states of the EU are carried out on the basis of the European arrest warrant. It 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. However, abolishment of restrictions in this areas is not absolute, the European arrest warrant should not be executed in some cases.

The article considers normative and accessory grounds for the non-execution of the European arrest warrant. Discussion on normative grounds based on the framework decision on the European arrest warrant and the surrender procedures between Member States. The consideration of accessory conditions relies on relevant practice of the European Court of Justice, which is developed within the framework of preliminary ruling procedure. The article also considers the essence and characteristics of the Quasi-European extradition system, the principles of mutual trust and mutual recognition and elements, which are integral part of the Quasi-European extradition system.

Keywords: *European Arrest Warrant, Extradition, Principle of Mutual Trust, Principle of Mutual Recognition, the European Court of Justice.*

1. Introduction

The quasi-European system of extradition is the most effective and apolitical mechanism for surrender at a global level. Although similar model of the mechanism applicable in the European Union exists in bilateral inter-state relations or regional formats (e.g. in the scandinavian area of extradition), quasi-European system of extradition has special nature and inherent characteristics. At the same time it is a legal mechanism for cooperation in the field of extradition, as well as a normative instrument for human rights protection. Unlike other models of extradition, the quasi-European regime of surrender stipulates participation of only not the national courts, but also a supranational body equipped with

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ambivalent functions - the European Court of Justice. Although functioning of the quasi-European system of extradition is more efficient than other large-scale models, it is not a supranational field of cooperation and is constantly experiencing material modernization through incorrect realization by the Member States or through the authentic interpretation of the European Court of Justice. Therefore, the European Arrest Warrant is not always implemented within the quasi-European system of extradition. Furthermore, the EU Law can be violated not only by the non-execution of the European Arrest Warrant, but also by its execution. Thus, it is important to identify and analyze the cases, that are not directly referred to in the EU Law, but have been developed for protection and improvement of the European standards of human rights by the European Court of Justice. Consequently, the present article aims to consider the accessory grounds for the non-execution of the European Arrest Warrant on the basis of the relevant practices of the European Court of Justice and to demonstrate its influence on the European standards of human rights. Consequently, there is also an overview of the absolute and optional normative criteria for refusal to implement the European Arrest Warrant. The article does not assess the consistency of approach, activism and policy of the European Court of Justice in relation to the European Arrest Warrant. Based on the objectives set out in the article, the study is largely based not only on the legal acts of the Union, the academic works of the field, but the modern approaches of the European Court of Justice and the actual practice in relation to the European Arrest Warrant.

Analytical and logical methods of the study is applied in the article, analyzing the innate elements of the quasi-European system of extradition, the fundamental principles of cooperation in the criminal field, statutory and additional conditions for the non-execution of the European Arrest Warrant, the practice of the European Court of Justice to this direction. In addition, the accessory grounds for the non-execution of the European Arrest Warrant developed by the practice of the Union Court is assessed by the synthetic method, which is now the Litmus Test in the terms of assessment of the standards of the basic fundamental rights of extradition within the Union.

The article is dedicated to the nature and characteristics of the quasi-European system of extradition. It deals with the principles of fundamental and constitutional importance in the EU Law - mutual trust and mutual recognition, on which the quasi-European regime of extradition is based. In addition, the discussion is carried out on the elements that are indispensable to the quasi-European system of surrender. The article discusses the normative grounds provided in the quasi-European instrument of extradition, which constitute absolute and voluntary circumstances for refusal to surrender. It examines the additional grounds for the non-execution of the European Arrest Warrant, which was developed by the European Court of Justice within the framework of the preliminary ruling procedure.

2. Nature and Characteristics of the Quasi-European System of Extradition

In 1999 at the Tampere European Council, the European Council has supported the initiative of replacement of the complicated, long-term procedures of extradition applicable within the European Council among the EU Member States with simplified, rapid mechanism¹, which would be based upon

Presidency Conclusions at Tampere European Council 15 and 16 October 1999, <http://www.euro-parl.europa.eu/summits/tam_en.htm#union>, [18.12.2017].

the principle of mutual trust² among the EU Member States and mutual recognition of the decision of the court of one EU Member State by other EU Member State.³ Formation of this system is provided from the objective of the European integration – the area of freedom, security and justice shall be formed within the framework of the Union, where really free movement of a person in the territory of the Union will be ensured and the high standards of safety will be developed and established, that will make the struggle of the Union against the organized crime, xenophobia, racism more effective and efficient.⁴ Its foundation was carried out by the Framework Decision “On the European Arrest Warrant and the Surrender Procedures”, adopted by the Council of the European Union⁵ (hereinafter – the Framework Decision). It should be noted that, unlike the regulation, the directive and decision of the Union, the Framework Decision was not a legislative act of the Union. It was a legal instrument that was adopted by the EU Council in the field of cooperation in criminal cases. After entry of the Lisbon Treaty into force, the treaties establishing the European Union does not envisage adoption of the Framework Decision. Its aim was to ensure the approximation and harmonization of the criminal legislation of the EU Member States. It was binding for the purpose of achieving the objectives provided in it. The Framework Decision was not of directly applicable and usable nature, as in the Directive, it required transposition of this objective in its national law. However, in accordance with the decision of the European Court of Justice on *Pupino Case*, the national institutes and/or the body was obliged to interpret the implementing act in the national law in accordance with the Framework Decision⁶. It is noteworthy, that normative realization of the principle of mutual recognition of the court decision on the criminal cases was adopted for the first time.⁷

² Decision of the European Court of Justice on the Case: Aranyosi and Căldăraru, [C-404/15 and C-659/15 PPU], Paragraph 75, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=175547&page-Index=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=302286>>, [18.12.2017].

³ *Mirianashvili G.*, The Scope of Cooperation on the Criminal Matters among the Member States of the European Union and the Courts of Georgia according to the Association Agreement, the Georgian-German Criminal Magazine, №2, 2017, 40-41, <<http://www.dgstz.de/storage/documents/g07F05BliiKewiUBD-BntciLjv3rObm359YmWuTVF.pdf>>, [18.12.2017].

⁴ *Mirianashvili G.*, European Union Law Guide, 2015, 77.

⁵ Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002-F0584>>, [18.12.2017]. 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, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2009.081.01.0024.01.ENG>, [18.12.2017].

⁶ See: Decision of the European Court of Justice on the Case: Maria Pupino [C-105/03], Paragraph 47, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=59363&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=316678>>, [18.12.2017].

⁷ Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002-F0584>>, [18.12.2017].

2.1. Mutual Trust and Mutual Recognition - the Principles of Constitutional Nature of the Union

The principles of mutual trust and mutual recognition in the EU Law are of fundamental importance and constitutional nature.⁸ They are developed in the format of integration of the European Court of Justice with various stages, for enhancement of cooperation in the field.⁹ They have interconnection¹⁰, however different content.¹¹ Through these principles it is possible to create and maintain such a space, which will not have national boundaries,¹² where there will be a presumption of protection in accordance with the law of human rights and freedoms in all Member States¹³ and application of the national standard of human rights protection shall not endanger the efficient realization of the instrument of cooperation on criminal cases formed at the level of the Union.¹⁴

The principle of mutual trust requires that in relation to the area of freedom, security and justice, a EU Member State, except for the urgent, exceptional cases, considered the actions of the other Member States as *a priori* in accordance with the fundamental human rights and freedoms recognized by the EU Law.¹⁵ Within the principle of mutual recognition, one EU Member State is obliged to provide maximum

⁸ Decision of the European Court of Justice on the Case: N.S. [C-411/10 and C-493/10], Paragraph 83, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=117187&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=303874>>, [18.12.2017]; Prechal, S.: Mutual Trust Before the Court of Justice of the European Union, European Papers, Vol. 2, 2017, No 1,76.

⁹ Emaus J., The Interaction Between Mutual Trust, Mutual Recognition and Fundamental Rights in Private International Law in Relation to the EU's Aspirations Relating to Contractual Relations, European Papers, Vol. 2, 2017, No 1, 117-140.

¹⁰ Marin L., "Only You": The Emergence of a Temperate Mutual Trust in the Area of Freedom, Security and Justice and Its Underpinning in the European Composite Constitutional Order, European Papers, Vol. 2, 2017, No 1, 142.

¹¹ Cambien N., Mutual Recognition and Mutual Trust in the Internal Market, European Papers, Vol. 2, 2017, No 1, 94.

¹² Decision of the European Court of Justice on the Case: Ruslanas Kovalkovas, [C-477/16], Paragraph 27, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=185243&doclang=EN>>, [18.12.2017]; Decision of the European Court of Justice on the Case: Opinion 2/13 pursuant to Article 218 (11) TFEU — Draft international agreement — Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms — Compatibility of the draft agreement with the EU and FEU Treaties, [2014], Paragraph 191, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=160882&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=304567>>, [18.12.2017].

¹³ Decision of the European Court of Justice on the Case: N.S. [C-411/10 and C-493/10], Paragraphs 78-80, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=117187&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=303874>>, [18.12.2017].

¹⁴ Decision of the European Court of Justice on the Case: Stefano Melloni, [C-399/11], Paragraph 60, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=135894&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=304986>>, [18.12.2017].

¹⁵ Decision of the European Court of Justice on the Case: Aranyosi and Căldăraru, [C-404/15 and C-659/15 PPU], Paragraph 78, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=175547&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=302286>>, [18.12.2017].

legal assistance regarding the criminal case to other EU Member State¹⁶. However, in this process it ensures inviolability of the substantive part of the criminal system of the EU Member States. On the one hand, the principle of mutual recognition establishes mutual trust between the national courts and on the other hand imposes obligation of loyal cooperation.¹⁷

The principle of mutual recognition imposes a EU Member State the obligation to recognize the decision of the court of another Member State in relation to the criminal case as relevant and to carry out the appropriate actions for its execution. At the same time, the Member State shall refrain from formation and modernization of the national legislation as such which threatens execution of the decision of the court of another Member State.

2.2. Characteristics of Quasi-European System of Extradition

The quasi-European system of extradition is a special example of multilateral cooperation. It is a special part of the EU Law. There is no similar model in the multi-subject format. The quasi-European mechanism of surrender is unique, as it is based on formal and material elements, according to which extradition is only a legal process and is not connected to the political dimension.¹⁸

In the process of extradition within the European Union, decisions are made only by the courts. The European Arrest Warrant should be filled in and issued for surrender. On the one hand, the relevant court of the extradition requesting State shall issue it and, on the other hand, the court of the extradition requested State shall take a decision on the surrender. In the process of extradition, central and executive bodies have a technical and administrative function only.¹⁹

In the quasi-European system of extradition, surrender is carried out by a European Arrest Warrant. It is a decision of the judicial body of the EU Member State, which requests the addressee State to arrest and surrender. The arrest warrant is issued if a criminal prosecution is carried out in a requesting state or for execution of a verdict on imprisonment or restriction of freedom. At the same time, the court

¹⁶ *Borgers M.J.*, Mutual recognition and the European Court of Justice, *European Journal of Crime, Criminal Law and Criminology*, 2010, 01, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1593463>, [18.12.2017].

¹⁷ *Larsen L. B.*, 'Some Reflections on Mutual Recognition in the Area of Freedom, Security and Justice', in the collection of articles: *Cardonnel P., Rosas A., Wahl N., [eds.]*, *Constitutionalising the EU Judicial System: Essays in Honour of Pernilla Lindh*, Oxford: Hart Publishing, 2012, 148.

¹⁸ For quasi-European system of extradition, see: *Alegre S., Leaf M.*, Mutual Recognition in Europe Judicial Cooperation -- a Step Too Far Too Soon? Case study: the European Arrest Warrant, *European Law Journal: Review of European Law in Context*, 2004, 200-217; *Amicis G.*, Initial Views of the Court of Justice on the European Arrest Warrant: Towards a Uniform Pan-European Interpretation? *European Criminal Law review*, 2012, 47-60; *Blekxtoon R., Ballegooij W.*, *Handbook on the European Arrest Warrant*, 2004; *Fichera M.*, The Implementation of the European Arrest Warrant in the European Union: Law, Policy and Practice, 2009; *Plachta M.*, European Arrest Warrant: Revolution in Extradition? *European Journal of Crime, Criminal Law and Criminal Justice*, 2003, 178-194; *Spencer J. R.*, Implementing the European Arrest Warrant: A Tale of How Not to Do It, *Statute Law Review*, 2009, 184-202.

¹⁹ Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A320-02F0584>>, [18.12.2017], indent 9.

issuing the European Arrest Warrant shall have the authority to issue its promulgation under the national legislation. The European Arrest Warrant shall be sent to the authority specified by the legislation of the addressee State, having the authority to execute the order. Issuance of the European Arrest Warrant is permitted in the following cases:

- Offenses stipulated by the Framework Directive of the EU Council, dated June 13, 2002²⁰; or
- If the legislation of the requesting State for the action committed stipulates restriction of freedom or imprisonment for at least 12 months or if the person has already been sentenced and he/she was sentenced to imprisonment or restriction of freedom for at least 4 months.

The maximum term for making the final decision on surrender is defined in the quasi-European system of extradition. When a person consents to surrender, a final decision on extradition shall be made within 10 days after acceptance of such consent.²¹ In other case, the final decision on execution of the European Arrest Warrant shall be taken within 60 days after the person being subjected to extradition.²² If in a specific case it is impossible to fulfill the European arrest warrant in the above-mentioned terms, the court of the extradition requested State shall immediately notify the court issuing an order to postpone the surrender. Execution of the European Arrest Warrant can be postponed for another 30 days.²³

3. Normative Grounds for Refusal to the Execution of the European Arrest Warrant

Execution of the European Arrest Warrant by the EU Member States, as indicated above, is mandatory due to the principles of mutual trust and mutual recognition. However, the exception is the

²⁰ The Framework-Decision stipulates 32 categories of offences: participation in a criminal organization; terrorism; trafficking in human beings; sexual exploitation of children and child pornography; illicit trafficking in narcotic drugs and psychotropic substances; illicit trafficking in weapons, munitions and explosives; corruption; fraud (including that affecting the financial interests of the EC within the meaning of the Convention on the Protection of the European Community's Financial Interest, dated July 26, 1995); legalization of illicit income (money laundering); counterfeiting of currency, including EURO; computer-related crimes; environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties; facilitation of unauthorized entry and residence; murder, grievous bodily injury; illicit trade in human organs and tissues; kidnapping, illegal restraint and hostage-taking; racism and xenophobia; organized or armed robbery; illicit trafficking in cultural goods, including antiques and works of art, racketeering and extortion; counterfeiting and privacy of products; forgery of administrative documents and trading; forgery of means of payment; illicit trafficking in hormonal substances and other growth promoters; illicit trafficking in nuclear or radioactive materials; trafficking in stolen vehicles; rape; arson; crimes within the jurisdiction of the International Criminal Court; unlawful seizure or aircraft/ships and sabotage.

²¹ Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender procedures between Member States, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A3-2002F0584>>, [18.12.2017], Article 17, Paragraph 2.

²² Ibid, Paragraph 3.

²³ If execution of the European Arrest Warrant can not be completed even within 30 days, the extradition requested State shall notify the European lawyer with the specific objective reasons. At the same time, if the Member State fails to execute the European Arrest Warrant at least twice, the EU Council will assess the process of execution of the Framework Decision by that State at the national level.

individual cases (criminal case), that are regulated by the Framework Decision. It is also important to mention, that it also contains special grounds for suspension and prohibition of the extradition process, that is related to the political and legal dimensions of human rights, on its side. In addition, there is an absolute and voluntary case of refusal to surrender in the quasi-European system of extradition. Such grounds will be discussed below.

3.1. Prohibition of Surrender for the Purpose of Protection of the Fundamental Rights

Within the European arrest warrant, the court of the EU Member State shall not surrender when:

- The EU Council determines the hazard of serious and permanent violation of the fundamental rights, freedoms and principles envisaged by the Charter in this Member State (*political dimension*).²⁴ In such a case, the national court is bound by the decision of the EU Council and execution of the European Arrest Warrant prior to invalidation of such a decision will cause violation of the Charter of the Fundamental Rights of the European Union and the Treaty on European Union;
- There is a serious risk that a person faces death penalty, torture, inhuman, cruel or degrading treatment and use of punishment (*legal dimension*);
- The purpose of the request for extradition of a person is not to impose liability for the offense, but persecution, detention or imprisonment on sex, race, religion, ethnic origin, citizenship, linguistic, political opinion or sexual orientation or other subjective grounds (*legal dimension*).

The unified rules and formal requirements are defined for issuance of the European Arrest Warrant. The Framework Decision determines the content and form of the European Arrest Warrant, inadequate filling of which will create the grounds for refusal to surrender.²⁵

3.2. Absolute Grounds

In case of absolute grounds, the court of the EU Member State is obliged to refuse execution of the European Arrest Warrant, when:

- A crime, on which the European Arrest Warrant is based, is amnestied in the extradition requested State. It is also necessary that this State has jurisdiction over the same crime, jurisdiction over criminal persecution of the same offense under the national law;
- The court of the extradition requested State has been informed that the final decision is already made by the court in the extradition requested State regarding the person subjected to surrender for the action, for which his/her extradition is requested. If in such a case, a person has been sentenced to a penalty, it is necessary that the execution of the sentencing process shall be pending or its execution shall

²⁴ Regarding the procedure for determination of the risk of serious and permanent violation of fundamental rights, freedoms and principles, see: *Mirianashvili G.*, European Union Law Guide, 2015, 173-174.

²⁵ For example, see: Decision of the European Court of Justice on the Case: Niculaie Aurel Bob-Dogi [C-241/15], Paragraph 67, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=179221&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=307411>>, [18.12.2017].

be completed or the execution of such a sentence can not be carried out by the law of the extradition requested State;

- A person subjected to surrender is incapable of guilt due to his/her own age in the extradition requested State.²⁶

3.3. Optional Grounds

The Framework Decision is more widely cited in the cases, when the European Arrest Warrant can not be executed. A court of a Member State has the right not to execute the European Arrest Warrant if:²⁷

- Any offense envisaged by the Framework Decision, on which the the European Arrest Warrant is based, is not a crime in the extradition requested State;

- Criminal prosecution is pending in the extradition requested State towards a person subjected to surrender, which was based on issuance of the European Arrest Warrant;

- The judicial body the extradition requested State has made a decision not to carry out a criminal prosecution for the action, which was based on issuance of the European Arrest Warrant, if with such decision the proceedings have been terminated, or the court has taken such final decision in relation to the same action against the same person and has prohibited continuation of the proceedings;

- The criminal prosecution or conviction of a person subjected to surrender is prohibited by the law in the extradition requested State and such acts are considered as part of the criminal jurisdiction of that country;

- The court of the extradition requested State has been informed that a final decision is made in the third State in respect of a person subjected to surrender for the action, for which his/her extradition is requested. If in that case the person has been sentenced, it is necessary that the execution process of the sentence be pending or its execution be completed or execution of such sentence can not be effected by the law of a third State;

- The person, to whom it is issued for execution of the arrest warrant or sentence regarding imprisonment, is a citizen of the extradition requested State, a person with a residence permit and this State undertakes to execute the arrest warrant or imprisonment order in accordance with domestic law;

- It is related to the offence, that:

- The law of the extradition requested State deems to be committed in whole or in part in the territory of that State (or on a place with such status); or

- Is committed beyond the territory of the extradition requesting State and the law of the extradition requested State does not permit the criminal prosecution of the same offenses, when they are committed outside its territory.

²⁶ Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A-32002F0584>>, [18.12.2017], Article 3.

²⁷ Ibid, Article 4.

1. It is issued for enforcement of such arrest warrant or detention order, in the trial process of which the person subjected surrender has not took part, however in such a case it is necessary that the procedural warranties envisaged by the law of the extradition requesting State are not indicated²⁸ (e.g. the right to appeal the default judgment, etc.).²⁹

In addition to the above-mentioned case, the non-execution of the European Arrest Warrant with other grounds is a violation of the Framework Decision.³⁰

4. Accessory Grounds for the Non-Execution of the European Arrest Warrant according to the Practice of the European Court of Justice

It is evident in the above-mentioned cases that in the quasi-European system of extradition, the court of the extradition requested State has special function in protection of the human rights. However, only reference to human rights within the legal act, as well as declaration of such norms and allocation of the mechanisms at the national level (e.g. the court) are not sufficient to protect the rights and freedoms effectively. In any legal system there must be an independent, separatist mechanism that will supervise implementation of human rights standards.³¹ The European Court of Justice carries out supervision over human rights in the quasi-European system of extradition together with the national court. It is entitled to consider, on the one hand, the national court's questions regarding interpretation and validity of the Framework-Decision (with the European Union's Charter of Fundamental Rights, the treaties establishing the European Union) within the preliminary ruling procedure³², and on the other hand, the

²⁸ 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, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2009.081.01.0024.01.ENG>, [18.12.2017], Article 1.

²⁹ It is noteworthy that the Constitutional Court of the Federal Republic of Germany has developed so called the concept of constitutional identity in the case related to the European Arrest Warrant, which grants the opportunity to the Federal Constitutional Court of Germany to assess the compliance of the European Arrest Warrant, as well as the protocols of the Union in general with the Right of Dignity recognized by the Fundamental Law of Germany. For more details see: <http://www.bundesverfassungsgericht.de/Shared-Docs/Entscheidungen/EN/2015/12/rs20151215_2bvr273514en.html;jsessionid=8C76433FF1384ABF38F047A3F8583A4E.1_cid370>, [18.12.2017].

³⁰ Decision of the European Court of Justice on the Case: Stefano Melloni, [C-399/11], Paragraph 63, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=135894&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=304986>>, [18.12.2017].

³¹ For more details see: Decision of the European Court of Justice on the Case: Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union, and Commission of the European Communities [C-402/05 P and C-415/05 P], Paragraph 286, <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62005CJ0402&from=EN>>, [18.12.2017].

³² *Preliminary ruling procedure* - The national court is obliged to ensure proper use of the EU Law in the order of the EU Member State. If in the process of examining the case the national court has reasonable doubts regarding the action or purposeful interpretation of the EU Law, and it shall be authorized and even obliged in some cases to apply to the European Court of Justice with the questions. The decision made by the European Court of Justice in the preliminary ruling procedure is of binding nature regarding the case

individual lawsuits regarding compliance of the Framework Decision with the Charter of Fundamental Rights of the European Union, the treaties establishing the European Union.³³

Analysis of the practices of the European Court of Justice shows that in the basic case, the proceedings in relation to the quasi-European mechanism of extradition are carried out in the form of the preliminary ruling procedure. This mechanism is a procedural instrument for development (or interruption³⁴) of human rights standards to this direction in the field of communication. Consequently, the accessory grounds for the non-execution of the European Access Warrant are developed by the European Court of Justice in the framework of the said procedure.

4.1. Justice Nature of the European Arrest Warrant

The European Court of Justice unequivocally ruled out the issuance of the European Arrest Warrant in the case – *Ruslanas Kovalkovas [C-477/16]* by the body, that carried out justice. In this case, the European Arrest Warrant was issued by the Ministry of Justice of Lithuania³⁵, which demanded arrest and surrender of a citizen of Lithuania - Kovalkovas from the Kingdom of the Netherlands to execute the sentence imposed due to severe body injury.³⁶ Lithuania believed that in the term “authority of justice” referred to in the Framework Decision, the Member State defines the appropriate body, at its own discretion, and imposes its rights and obligations under the national law.³⁷ According to the European Court of Justice, the Member State does not have the competence to define the content and scale of this term.³⁸ It has an autonomous nature in the EU Law.³⁹ It implies a body, which exercises justice and is depoliticized and independent. Consequently, the Member State is obliged to take the context and purpose into consideration in the process of transposition, interpretation and implementation of the EU legal acts, including the Framework Decision in the national law.⁴⁰ In addition, the European Court of Justice noted that the Ministry of Justice of Lithuania is the executive body, whose European

concerned. It is necessary to take it into account even in the process of consideration of other cases. The mentioned procedure plays a fundamental role in development of the EU Law. See: Article 267 of the Treaty on European Union. For more details see: *Kaczorowska A.*, *European Union Law*, 2011, 256-290;

³³ 1992 Treaty on European Union, Article 269.

³⁴ For interruption of development of the standards of human rights protection by the European Court of Justice, please see: Decision of the European Court of Justice on the Case: *Stefano Melloni*, [C-399/11], Paragraph 60, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=135894&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=304986>>, [18.12.2017].

³⁵ It is noteworthy that the present case was not the first, when the Ministry of Justice of Lithuania issued the European Arrest Warrant. For example see: Evaluation report of the Council of 14 December 2007 concerning national practices relating to the European arrest warrant [Evaluation report on the fourth round of mutual evaluations ‘the practical application of the European arrest warrant and corresponding surrender procedures between Member States’: Report on Lithuania [12399/2/07 REV 2].

³⁶ Decision of the European Court of Justice on the Case: *Ruslanas Kovalkovas*, [C-477/16], Paragraphs 10-12, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=185243&doclang=EN>>, [18.12.2017].

³⁷ *Ibid.*

³⁸ *Ibid.*, Paragraph 32.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

Arrest Warrants do not subject to judicial control.⁴¹ Consequently, such a warrant is not enough for establishment and existence of high confidence among the Member States.⁴² It should be said, that the purpose of formation of the quasi-European system of extradition was complete depoliticization and de-bureaucratization of this process, and definition of an exact margin among legal and political authorities. The quasi-European system of extradition, unlike the European model, is based on cooperation on surrender only among the courts. Thus, the material participation of the executive authority in the process of issuance of the European Arrest Warrant is contrary to the purpose and context of the Framework Decision.

4.2. Formal Legality of the European Arrest Warrant

According to the European Court of Justice, on the one hand, the formal-legal criteria for filling shall be ensured during issuance of the European Arrest Warrant, and on the other hand, the grounds for issuance of the European Arrest Warrant shall be provided as a separate national act, such as a national arrest warrant. According to the annex approved by the Framework Decision, issuance of the European Arrest Warrant shall be based on evidence of execution of a judgment, the arrest warrant or other court decision with similar effect.⁴³ In the case - *Niculaie Aurel Bob-Dogi [C-241/15]*, the European Arrest Warrant was issued regarding surrender of a Romanian citizen Bob-Dogi, who was accused for severe injury of health of a Hungarian citizen due to driving the truck with excess speed in Hungary. It is important, that the European Arrest Warrant was indicated in the grounds of the European Arrest Warrant against Bob-Dogi. Based on the systematic, teleological and grammatical methods of the Framework Decision, the European Court of Justice clearly stated that the general term referred to in the Annex to the Framework Decision implies the national arrest warrant, correspondingly in its general sense the definition contradicts the nature of the European Arrest Warrant⁴⁴. Thus, at least the formal requirements set by the Framework Decision should be considered for validation of the European Arrest Warrant.⁴⁵ The court of the extradition requested State is obliged to evaluate not only the content, but also the formal side of the European Arrest warrant, only in such case the procedural and fundamental rights of the person subjected to surrender will be protected (so called “*dual protection level*”).⁴⁶ Consequently, if the European Arrest Warrant is not based on the separate national act, such as the national arrest warrant, it is not deemed to be valid, legal and legally enforceable.⁴⁷

⁴¹ Decision of the European Court of Justice on the Case: *Ruslanas Kovalkovas*, [C-477/16], Paragraph 44. <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=185243&doclang=EN>>, [18.12.2017].

⁴² Ibid.

⁴³ Ibid, Paragraph 68.

⁴⁴ Ibid, Paragraphs 43-47.

⁴⁵ Ibid, Paragraph 53.

⁴⁶ Ibid, Paragraph 56.

⁴⁷ Ibid, Paragraph 66.

4.3. Limitation of Surrender of a EU Citizen to the Third State

According to the European Court of Justice, when a EU Member State receives extradition request from a third State regarding surrender of a citizen of another Member State, it shall be obliged to make the decision on extradition of such person to the third State, on the one hand, in accordance with the Charter of the Fundamental Rights of the European Union, and on the other hand to inform the EU Member State about such request, whose citizen is a person to be surrendered and will surrender him/her on the basis of the Framework Decision. However, the European Arrest Warrant issued by this Member State shall not be executed, when the EU Member State, following to its domestic law, does not have the competence to punish its citizen for offenses committed beyond the national territory.

In the case of *Aleksei Petruhhin [C-182.15]*, the Russian Federation demanded surrender of Estonian citizen Aleksei Petruhhin from Latvia, who had been charged in Russia for selling of large quantities of narcotic drugs.⁴⁸ It is noteworthy, that Latvia did not own jurisdiction over criminal persecution of Petruhhin, because he was not its citizen and at the same time Petruhhin committed a crime in the third State. Thus, with refusal to extradition of Petruhhin, the essence of the extradition was neglected (*punish or surrender*). In addition, with the extradition of Petruhhin in the Russian Federation, the principle of prohibition of discrimination on the grounds of citizenship under the Articles 18 - 20 of the Treaty on functioning of the European Union would be violated, which obliges the EU Member State to treat the citizen of another Member State like its own one.⁴⁹ It is important that in accordance with the Article 62 of the International Treaty signed between Latvia and the Russian Federation in 1993, the citizens of the parties shall not be extradited to another State. Consequently, with direct surrender of Petruhhin, the Primerian Law of the EU would be violated. The European Court of Justice was facing a complicated legal dilemma. However, the decision made by it was optimal, since protection of human rights as well as effective transnational cooperation against crime was provided. On the basis of a so called frank cooperation principle, the European Court of Justice declared that when a third State requests surrender of a EU citizen, the extradition requested State is obliged to notify the EU Member State about extradition of its citizen and to surrender him/her to the same State in accordance with the Framework Decision.⁵⁰ According to the motivation of the European Court of Justice, it is assumed that if a parent State does not have a jurisdiction of criminal prosecution against its citizen, the European Arrest Warrant shall not be executed and the EU Member State shall be authorized to surrender the EU citizen to a third State in order the offence not to remain unpunished. However, it is obliged to assess whether there is a serious risk of violation of fundamental rights and freedoms in the extradition

⁴⁸ Decision of the European Court of Justice on the Case: Aleksei Petruhhin [C-182/15], Paragraphs 10-14, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=183097&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=315242>>, [18.12.2017].

⁴⁹ For prohibition of discrimination against a EU citizen in the context of the case of Aleksei Petruhhin, see: *Pozdnakova A.*, Aleksei Petruhhin: Extradition of EU Citizens to Third States, European Papers, Vol. 2, 2017, No 1, 209-222.

⁵⁰ *Ibid*, Paragraphs 42-43.

requesting State.⁵¹ *Inter alia*, such assessment shall be based on the assessments, reports, opinions and decisions made by the bodies created within the framework of authoritative regional or/and universal international treaties on the standards, condition of human rights protection in the extradition requesting State.⁵²

With the activation of the European Court of Justice it is evident that it creates the policy, development directions for the quasi-European system of extradition and cares not only for effectiveness, primacy and autonomy of justice, but also for raising of the human rights standards.

5. Conclusion

Regardless of its scale, the quasi-European system of extradition is the most effective tool for the surrender procedure. According to the opinions provided in the article hereof, it has been confirmed that it is simultaneously a legal mechanism for cooperation in the field of extradition, as well as a normative instrument for human rights protection. The quasi-European system of extradition has inherent characteristics, which are related to maximum period of the surrender procedure, conceptual and formal justification of the European Arrest Warrant, validity, issuance by the appropriate authority, depoliticization, technical and administrative functions of the executive authority in the extradition process, etc. Furthermore, only quasi-European model of extradition is characterized by the fact that compliance of the extradition process with the procedural and fundamental rights of a person to be surrendered can be judged by a judicial triad consisting of the national courts and the European Court of Justice. Consequently, the quasi-European regime of extradition is in a permanent process of renewal by the EU Supreme Court, in non-legislative manner. Along with the normally established grounds for the non-execution of the European Arrest Warrant, the accessory cases are formed as a result of activism of the European Court of Justice, when execution of the European Arrest Warrant is prohibited for protection of the rights of the person to be surrendered. According to the European Court of Justice, it is prohibited to execute the European Arrest Warrant if it is issued by a body, which does not carry out justice. According to the Court, the European Arrest Warrant shall not be executed if there are no formal legal criteria for its filling and there is no independent national act for its publication.

It is important that the EU Law defines the scope of surrender of the EU citizen to other State. Where a third State requests surrender of the EU citizen, the extradition requested State is obliged to send a notification to the EU Member State about the request of extradition of its citizen and, if requested, to surrender according with the Framework Decision of the same State, if the Parent State has the jurisdiction of criminal prosecution of its own citizen. However, a EU Member State is obliged to assess whether there is a serious risk of violation of fundamental rights and freedoms in the extradition requesting State. Along with other objective information, such assessment shall be based on the

⁵¹ Decision of the European Court of Justice on the Case: Aleksei Petruhin [C-182/15], Paragraph 58, <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=183097&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=315242>>, [18.12.2017].

⁵² Ibid, Paragraph 59.

assessments, reports, opinions and decisions made by the institutes created within the framework of the authoritative regional and / or universal international treaties on the standards, conditions of human rights protection.

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