

Criminal law

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**The European arrest warrant as an instrument of judicial cooperation:
advantages and problematic aspects**

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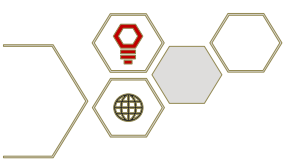
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Abstract. The article provides a comprehensive analysis of the European Arrest Warrant as a key instrument of judicial cooperation in criminal cases within the European Union. The prerequisites for its introduction related to the need to increase the efficiency and speed of the procedures for the transfer of persons, as well as the rejection of bulky intergovernmental extradition mechanisms, are considered. Special attention is paid to the legal nature of the warrant, its regulatory consolidation in the Framework Decision of the Council of the EU of June 13, 2002, and the implementation mechanism through the principle of mutual recognition of judicial decisions. The main features of the application of the European Arrest Warrant are analyzed, the simplification of the transfer procedures, the introduction of clear procedural deadlines, the expansion of the list of criminal offenses for which transfer is allowed, as well as the partial rejection of the principle of double criminality. The advantages of this institution compared to traditional extradition, consisting in increasing the efficiency of cross-border criminal justice and



strengthening mutual trust between EU member states, are highlighted. At the same time, the problematic aspects of the practical application of the warrant are outlined. Attention is drawn to the difficulties associated with the ambiguity of information, differences in national legal systems, procedural complications of the transfer of persons, as well as the risks of human rights violations. Separately, the controversial issues regarding the restriction of states' abilities to refuse the transfer of their own citizens and potential abuses of this instrument are analysed. It is concluded that the European Arrest Warrant is an effective mechanism of criminal law cooperation, which reflects the transformation of extradition law in the direction of integration and simplification of procedures, but requires further improvement taking into account practical challenges and the need to ensure a balance between the effectiveness of justice and the guarantees of human rights.

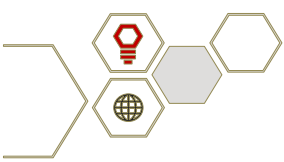
Keywords: European Arrest Warrant, extradition, European Union, European legal order, international cooperation, justice, principle of mutual recognition of judicial decisions.

Європейський ордер на арешт як інструмент судового співробітництва: переваги та проблемні аспекти

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Анотація. У статті здійснено комплексний аналіз Європейського ордеру на арешт як ключового інструменту судового співробітництва у кримінальних справах у межах Європейського Союзу. Розглянуто передумови його запровадження, пов'язані з необхідністю підвищення ефективності та оперативності процедур передачі осіб, а також відмовою від громіздких



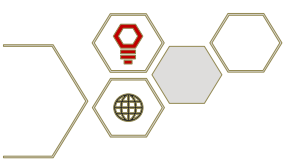
міждержавних екстрадиційних механізмів. Особливу увагу приділено правові природі ордера, його нормативному закріпленню у Рамковому рішенні Ради ЄС від 13 червня 2002 року та механізму реалізації через принцип взаємного визнання судових рішень.

Проаналізовано основні особливості застосування Європейського ордера на арешт, зокрема спрощення процедур передачі осіб, запровадження чітких процесуальних строків, розширення переліку кримінальних правопорушень, щодо яких допускається передача, а також часткову відмову від принципу подвійної кримінальності. Висвітлено переваги цього інституту порівняно з традиційною екстрадицією, що полягають у підвищенні ефективності транскордонного кримінального правосуддя та зміцненні взаємної довіри між державами-членами ЄС.

Водночас окреслено проблемні аспекти практичного застосування ордера. Зокрема, звернута увагу на труднощі, пов'язані з неоднозначністю інформації, відмінностями національних правових систем, процедурними ускладненнями передачі осіб, а також ризиками порушення прав людини. Окремо проаналізовано дискусійні питання щодо обмеження можливостей держав відмовляти у передачі власних громадян та потенційні зловживання цим інструментом.

Зроблено висновок, що Європейський ордер на арешт є ефективним механізмом кримінально-правового співробітництва, який відображає трансформацію екстрадиційного права у напрямі інтеграції та спрощення процедур, однак потребує подальшого вдосконалення з урахуванням практичних викликів і необхідності забезпечення балансу між ефективністю правосуддя та гарантіями прав людини.

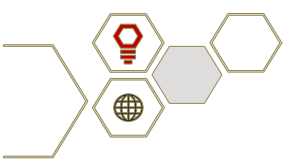
Ключові слова: європейський ордер на арешт, екстрадиція, Європейський Союз, європейський правопорядок, міжнародне співробітництво, правосуддя, принцип взаємного визнання судових рішень.



The contemporary development of international cooperation in the field of criminal justice is characterised by the strengthening of integration processes and the search for effective mechanisms to counter transnational crime. In this context, the improvement of procedures for the transfer of persons who have committed criminal offenses between states acquires particular importance. Traditional extradition mechanisms, which were historically formed as intergovernmental and largely politicized procedures, have proven to be insufficiently effective in the face of increasing mobility of individuals and the growing complexity of criminal threats.

G. Vermeulen and T. Van der Beken, studying the current state of the institution of surrender, distinguish two interrelated trends that significantly affect the development of extradition law in Europe. Primarily, there is a gradual expansion of the scope of extradition mechanisms and an increase in their flexibility. While previously international treaties provided for a clearly defined list of extraditable crimes, a shift from this model is now observed: surrender is becoming possible for a wide range of serious criminal offenses. At the same time, traditional restrictions based on the sovereign prerogatives of states, in particular the refusal to surrender for political and fiscal offenses, are gradually losing their decisive role. The second important vector is related to the increased need for operational and effective international cooperation, which leads to a transition to simplified extradition procedures [12, p. 265]. These transformations are most vividly manifested within the European legal space, primarily within the European Union, where a new model of cross-border cooperation is emerging, focused on efficiency and mutual trust between the judicial authorities of the member states. In this context, the European Arrest Warrant has become a key instrument for implementing the principle of mutual recognition of judicial decisions within the area of freedom, security, and justice.

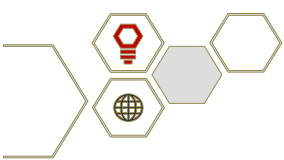
The issues of the European Arrest Warrant are the subject of profound scientific analysis in the works of both domestic and foreign researchers. In particular, certain aspects of its legal nature, functioning mechanism, and application



practice were studied by T. Van der Beken, N. Bench, P. Biryukov, G. Vermeulen, O. Goncharuk, A. Hrytskiv, G. Hryshchuk, V. N. Denisov, V. Zuiev, G. Illuminati, M. Kusak, P. Michel, R. Montero, V. Muravyov, Ye. Nalyvaiko, M. Pashkovskyi, M. Traskevych, O. Turchenko, and others.

The aim of the study is a comprehensive analysis of the legal nature of the European Arrest Warrant, the specifics of its functioning in the European Union legal system, as well as the identification of the main problems of its practical application and the determination of possible directions for their resolution.

Presentation of the main material. In the European Union (hereinafter - EU), seeking to optimize the bulky and lengthy extradition procedures that had a distinct political and administrative character, a qualitatively new cooperation mechanism was formed - the European Arrest Warrant. Its essence lies in the transition from an intergovernmental model of surrender to direct interaction between judicial authorities, which ensures the speed and efficiency of the transfer of people in criminal proceedings. At the same time, the formation of this institution was conditioned by previous EU political guidelines, fixed, in particular, at the 1999 European Council summit in Tampere, where the priority of introducing the principle of mutual recognition of judicial decisions in the field of law enforcement, including the issue of surrendering persons who have committed offenses, was determined. In development of these provisions, the European Commission prepared a relevant draft legislative act in the form of a Framework Decision and submitted it to the Council of the EU for consideration. Consequently, on June 13, 2002, the Framework Decision "On the European Arrest Warrant and the surrender procedures between Member States" (hereinafter - Framework Decision) [8] was adopted, which became the legal basis for the functioning of this institution. Since July 1, 2004, the Framework Decision has effectively displaced the application within the EU of a number of international legal acts, in particular: the 1957 European Convention on Extradition [4], the 1978 European Convention on the Suppression of Terrorism [3], the 1989 Agreement between the Member States of the EU on

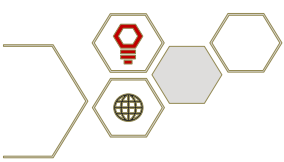


simplifying the transmission of extradition requests [9], the 1995 Agreement on simplified extradition procedure [11], the 1996 Agreement on extradition, as well as relevant provisions of the Schengen Agreement [10].

The Framework Decision significantly modernised the mechanism of arrest and transfer of persons, making it more operational and less formalized. In particular, traditional political and administrative stages of the extradition procedure were eliminated and replaced by direct interaction between judicial authorities. After coming into force on July 1, 2004, the courts of EU member states began to recognise requests for the transfer of persons coming from the courts of other member states with minimal procedural requirements. Within the Framework Decision, such requests were named "European Arrest Warrant" (hereinafter - Warrant). The Framework Decision defines the Warrant as a "judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order" [8].

According to the provisions of Community law, the execution of the Warrant is conditioned by the commission of a specific range of criminal offenses for which the legislation of the initiating state provides for punishment in the form of deprivation of liberty for a term of at least three years. This category includes socially dangerous acts that pose an increased threat to security and public order, in particular terrorist activities, human trafficking, corruption offenses, participation in criminal associations, counterfeiting of currency, intentional deprivation of life, manifestations of racial intolerance and discrimination, violent crimes, illegal operations with stolen vehicles, as well as various forms of fraud, including those affecting the financial interests of the EU.

The mechanism for implementing the Arrest Warrant provides for direct interaction between the judicial authorities of the member states. The court that made the decision to issue the Warrant sends it directly to the competent court of the executing state. If such a court is not previously determined, the initiating state may



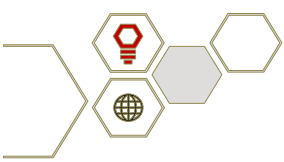
use the assistance of the European Judicial Network to establish the proper recipient. After receiving the Warrant, the authorised court of the executing state considers the issue of its implementation in accordance with the norms of national law. On the basis of the Warrant, the person is subject to detention, while the grounds for such a measure must be properly explained to them, and procedural rights must be guaranteed, in particular the right to legal aid and the services of an interpreter. Legal prescriptions establish clear time limits for making a decision regarding the execution of the Warrant: the final decision must be made no later than 60 days from the moment of detention. In case the provided materials are insufficient, the court of the executing state is entitled to demand additional information from the court that issued the Warrant.

Regulatory provisions also provide for both mandatory and optional grounds for refusal to execute the Warrant. Mandatory grounds include situations where a final judicial decision already exists regarding the person for the same acts (application of the *ne bis in idem* principle), when the act falls under an amnesty in the executing state, or when the person has not reached the age of criminal responsibility (Art. 3). Among additional grounds are the lack of criminalisation of the relevant act in the law of the executing state or the presence of a court decision from a third state regarding the same facts [8]. Separately, the Framework Decision mentions the following additional grounds:

a) if the person has become the subject of a Warrant, is being prosecuted in the state that must execute this warrant for the same act that became the basis for issuing the Warrant;

b) when the judicial authorities of the state executing the Warrant have decided not to initiate or to terminate criminal prosecution for the act regarding which the Arrest Warrant was issued;

c) when the person sought in one of the member states has become the subject of a final decision regarding the same acts and this decision is an obstacle to further criminal prosecution;



d) when, according to the legislation of the country executing the Warrant, the statute of limitations for initiating criminal prosecution or for executing the punishment has expired, provided that under the national criminal law of such a state the acts of this person fall under its jurisdiction;

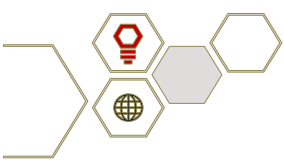
e) if the judicial body executing the Warrant has information that a final judicial decision was issued by a non-EU country regarding the requested person for the commission of the same acts, provided that in case of conviction, the punishment has already been served, is in the process of execution, or cannot be executed according to the laws of the country that issued the conviction;

f) when the requested person is in the state executing the Warrant regarding this person, or resides in this state, or is its citizen and this state undertakes to execute such a punishment or security measure in accordance with domestic law;

g) when the Warrant concerns crimes which, according to the law of the state executing the Warrant, were committed entirely or partially on its territory or in a place recognized as the territory of this state, or were committed outside the territory of the state that issued the Warrant, while the law of the state executing the Warrant does not allow criminal prosecution for similar crimes committed outside its territory [8].

In addition to the transfer of a person, the Warrant may also cover the transfer of objects that are significant for criminal proceedings, in particular evidence or property obtained as a result of illegal activity. To ensure proper execution, the Warrant must be translated into the official language of the executing state and transmitted in a form that guarantees the possibility of verifying its authenticity.

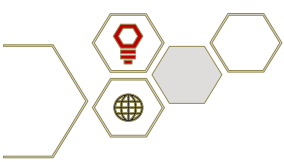
One of the defining differences of the Warrant compared to classical extradition is the transformation of the approach to the principle of double criminality. In the traditional extradition model, surrender is allowed only on the condition that the incriminated act is criminally punishable both in the state requesting surrender and, in the state, carrying it out. This approach performed the function of a legal barrier that ensured the consistency of the criminal law systems



of different states. Within international treaties, this requirement was combined with additional criteria, regarding the minimum term of punishment, which reinforced the restrictive nature of the extradition procedure and complicated its application in cases of differences in national approaches to the criminalisation of certain acts. The Warrant significantly changes this structure, providing for the possibility of waiving the check for double criminality for the list of the most serious offenses. This approach is based on the principles of mutual trust between EU member states and provides for the priority of the efficiency of criminal prosecution over formal conflicts of national legal systems. In other cases, the application of the Warrant is possible provided that the state of its issuance provides for a punishment in the form of deprivation of liberty or a security measure for a term of at least 12 months, and in case of execution of a sentence - at least 4 months.

Ye. Nalyvaiko highlights another distinctive feature of the Warrant from the classical extradition procedure. The classical extradition procedure requires an intergovernmental, interstate approach involving diplomatic channels. The Warrant, in contrast, is based on direct contacts between judicial authorities. It is sent directly to the competent judicial office if it is known where the requested person is located. Then the court establishes the identity of the arrested person and begins, together with the requesting party, to prepare a decision on their transfer according to the Warrant. If the criminal is hiding, then requests for their arrest and transfer go to the Schengen Information System and Interpol. The police receive these requests and, after detaining the sought person, transfer them to the judicial office that issued the warrant [7, p.135].

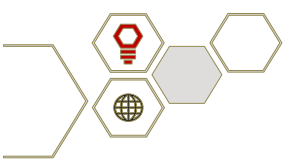
Unlike the extradition procedure, which can last many months and even years, the execution of the Warrant has specific time frames: after the detention of the person, the final issue of their surrender is decided by the court within a period of no more than 60 days from the moment of arrest; in exceptional cases, this period may be extended to 90 days. The state demanding the transfer of a person can send the Warrant using electronic means of communication to the competent authorities



of the state where the criminal is hiding. The person who committed the crime can be arrested immediately based on the Warrant. Within 48 hours, the person regarding whom the Warrant was issued must appear in court. If the detained person consents to surrender, then such a decision is made within 10 days after providing consent. It is worth noting that the introduction of the Warrant issuance procedure significantly accelerated the transfer of persons from one country to another [5, p. 60].

Analysing the positive aspects of the Warrant, one cannot ignore a number of practical challenges that arise in the process of its application. Thus, V. Irinieieva in her dissertation research notes the presence of a few complications that manifest in the functioning of this instrument, particularly those related to the ambiguity and insufficient clarity of information. Specifying these problematic aspects, the researcher points out that "sometimes law enforcement agencies issue requests for additional information in situations where the need for such information is not obvious. Difficulties are also caused by differences between the legal systems of states, in particular regarding the requirements for the execution of warrants; problems regarding the extradition of citizens to serve punishment in another state after judicial consideration (which leads to delays during the consideration of the case); complications regarding the practical organisation of the transfer of suspects" [6, p. 66-67].

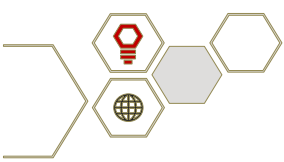
A. Voitsikhovskiy and S. Antoshchuk, in turn, emphasise the following problematic aspects: first, the warrant does not provide for the right of EU member states to refuse to transfer their own citizens, which means the mandatory responsibility of all persons who committed crimes before the courts of EU member states. In this context, the institution of political asylum between member states effectively does not operate, which can be considered a contradiction with the provisions of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. Second, the warrant does not distinguish temporary arrest from detention for an indefinite period, as provided by the national legislation of some member states. Third, the European Arrest Warrant is applied exclusively



among EU member states, while for other countries the standard extradition procedure remains in force according to the 1957 European Convention on Extradition. Fourth, some EU member states fear possible abuse of the warrant, in particular its application for political motives, restrictions on the supervisory functions of the police, and difficulties associated with differences in the definitions of investigation and prosecution of crimes in different European legal systems [1, p. 59-60].

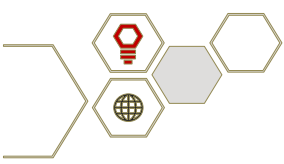
In our opinion, these aspects should be considered not as flaws in the Warrant's construction, but as manifestations of the stage of formation of a single European criminal law space. At the same time, their presence necessitates further harmonisation of national procedures for the execution of the Warrant and improvement of the mechanisms for mutual recognition of judicial decisions.

Conclusions. The European Arrest Warrant is an important stage in the development of the institution of extradition in the European Union and reflects the transition to a model of direct interaction between judicial authorities based on the principle of mutual recognition of judicial decisions. One can fully agree with the statement of A. Hrytskiv that "the European Arrest Warrant 'carried out a revolution', eliminating the right of a country not to surrender its citizens" [2, p. 537]. Its introduction ensured the simplification and acceleration of surrender procedures, increasing the efficiency of cross-border criminal prosecution. At the same time, the practice of applying the European Arrest Warrant reveals a number of problematic aspects related to the differences in national legal systems, procedural complications, and issues of ensuring human rights. This indicates the need for further improvement of its implementation mechanism. Thus, the European Arrest Warrant is an effective and progressive instrument of judicial cooperation, which contributes to the development of the area of freedom, security, and justice in the European Union and requires further normative improvement to increase the consistency of the legal mechanisms of its application.



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