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SIMULTANEOUS EUROPEAN ARREST WARRANTS AND EXTRADITION REQUESTS BETWEEN EUROPEAN UNION MEMBER STATES AND THIRD COUNTRIES THROUGH THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION AND ITS IMPLICATIONS FOR NORTH MACEDONIA

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Abstract

Extradition is the oldest form of international criminal legal assistance and represents the only instrument of judicial cooperation with non-European Union member states, or third countries. Within EU member states, this instrument has been replaced by the European Arrest Warrant, introduced by the EU Council through Framework Decision 2002/584/JHA of June 13, 2002, on the European Arrest Warrant and the surrender procedures between member states. By implementing the Framework Decision into the national legislations of EU member states, the procedure for surrendering requested persons has been simplified and accelerated, significantly contributing to a more effective and decisive fight against crime. This paper addresses a specific issue concerning the application of the European Arrest Warrant, namely the decision-making process regarding competing requests when a member state receives both a European Arrest Warrant from an EU member state and an extradition request from a third country simultaneously. The normative solutions are supplemented with the case law of the Court of Justice of the European Union, which is presented in this paper, as well as with guidelines aimed at addressing issues not regulated by the Framework Decision.

Keywords: *international criminal legal assistance, extradition, Framework Decision, European Arrest Warrant, case law*

1. Overview of International Criminal Legal Assistance

International criminal legal assistance, as part of international cooperation between states in criminal cases, originated for practical reasons to strengthen collaboration among states in

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combating crimes with foreign elements.[1] Thus, it pertains to proceedings in cases with an international element, where states partially relinquish their sovereignty, as the criminal jurisdiction of each state ends at the borders of its territory. International criminal legal assistance represents a set of actions and measures undertaken by the criminal procedure authorities of one state at the request of another state to facilitate criminal prosecution or the execution of a criminal sanction in a given criminal case.[2] It is important to emphasize that in providing international legal assistance, in accordance with the principle of *locus regit actum*, the requested state acts according to its own laws, not the laws of the requesting state. This means that the validity or legality of the actions taken is assessed based on the law of the requested state, not that of the requesting state.[3]

International criminal legal assistance is governed by national laws (domestic sources of law) and international treaties (international sources of law). International treaties that are concluded and ratified in accordance with a country's legal regulations become part of that country's legal system and hold greater legal authority than national laws. The primary domestic legal source in a given country is the law regulating international legal assistance. For instance, in North Macedonia, this is the Law on International Cooperation in Criminal Matters.[4], The most important international sources of law are international treaties (bilateral or multilateral agreements). A bilateral international treaty is an agreement concluded between one state and another international entity, while a multilateral treaty is an agreement concluded by one state with two or more international entities. An example of a bilateral treaty is the Agreement between the Republic of Croatia and the Republic of North Macedonia on Extradition (hereinafter referred to as the Agreement between Croatia and Macedonia on Extradition).[5] Further, An example of a multilateral international treaty is the European Convention on Mutual Assistance in Criminal Matters.[6]

International judicial cooperation in criminal matters is particularly significant in cases where a criminal offense is committed, and the perpetrator flees to the territory of another state. In such situations, as previously mentioned, the criminal jurisdiction of the state where the offense was committed ceases at its borders. In such cases, the state where the criminal offense was committed has the only option of requesting international legal assistance from the other state to conduct or obtain evidence, transfer prosecution, enforce a criminal judgment, extradite the offender, and so on.[7] In the following sections, the authors will present two forms of international

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[1] Krapac, D: *Međunarodna kaznenopravna pomoć*, Narodne novine, Zagreb, 2006. godina, str. 3. te Hržina, D: *Međunarodna pravna pomoć i pravosudna suradnja u kaznenim stvarima – teorijski i praktični aspekti*, Pravosudna akademija, Zagreb, 2021, pp. 6.

[2] Krapac, D: *Međunarodna kaznenopravna pomoć*, *op. cit.,* pp. 3.

[3] *Legal Lexicon, Lexicographic Institute Miroslav Krleža, Zagreb, 2007, p*. 675: *Locus regit actum* is the rule according to which the law of the state in the territory in which a legal act is undertaken, including procedural actions, is applicable.

[4] *The Law on International Cooperation in Criminal Matters (Official Gazette of the Republic of North Macedonia, No.*77/2021)

[5] Agreement between the Republic of Croatia and the Republic of Macedonia on Legal Assistance in Civil and Criminal Matters, signed in Skopje on September 2, 1994, *Narodne novine* – Međunarodni ugovori, No. 3/95, entered into force on May 29, 1995, *Narodne novine* – Međunarodni ugovori, No. 1/97. For further reading, also see: Agreement between the Republic of Croatia and the Republic of Macedonia on Mutual Enforcement of Court Decisions in Criminal Matters, signed in Skopje on September 2, 1994, *Narodne novine* – Međunarodni ugovori, No. 8/95, entered into force on June 26, 1995, *Narodne novine* – Međunarodni ugovori, No. 12/97.

[6] *Europska kovencija o međusobnom pružanju pravne pomoći u krivičnim stvarima donesena*, Strasbourgu April 20, 1959. (entered into force in BiH on 24 July 2005, and published in the Official Gazette of BiH – International Treaties No. 04/2005).

[7] See Article. 8. ZMPPKS.

judicial cooperation in criminal matters. The first is extradition, as a traditional form of international criminal legal assistance, and the second is the European Arrest Warrant (hereinafter: EAW), which has replaced the extradition mechanism in relations between the member states of the European Union (hereinafter: EU). Subsequently, the analysis will focus on situations involving simultaneous extradition requests and European Arrest Warrants, as well as existing solutions based on the case law of the Court of Justice of the European Union (hereinafter: CJEU). This research employs four complementary research methods: the descriptive method to provide a comprehensive overview of existing legal frameworks and mechanisms; the normative method to evaluate the legal norms governing international judicial cooperation; the comparative method to contrast the implementation of EAW and surrender mechanisms between member states and in non-member states; and the statistical method to analyze quantitative data regarding the execution of EAWs and extradition requests. The hypothesis of this study is that the European Arrest Warrant and related surrender mechanisms have significantly enhanced the efficiency of judicial cooperation among EU member states, but their extension and application in non-member states remain limited due to inconsistent legal frameworks and insufficient support for free legal aid. The research will aim to answer the following questions: How do EU member states handle simultaneous extradition requests and European Arrest Warrants in light of the case law of the CJEU? What are the current mechanisms for executing the European Arrest Warrant in non-member states, and how effective are the provisions for free legal aid in these states? The conclusion will present a synthesis of the research findings, accompanied by the authors' recommendations and final observations.

2. Extradition Prior to the European Arrest Warrant

Extradition is a form of international criminal legal assistance aimed at transferring a specific individual from one country to another for the purpose of criminal prosecution or the enforcement of a criminal sanction. The extradition process is политицал, spearheaded by the ministries of justice, and is governed by the European Convention on Extradition of 1957.[8] This is a legal mechanism governed by the provisions of domestic law in a given country and international law (e.g., the Law on International Cooperation in Criminal Matters and the European Convention on Extradition). It regulates complex issues between the requesting state and the requested state. Due to its complexity and the numerous unresolved questions that may arise between the two states, the extradition process is also referred to as "extensive" international criminal legal assistance.[9] In contrast to "comprehensive" international criminal legal assistance, "simplified" international criminal legal assistance involves a much less complex procedure and typically includes actions such as delivering court documents to another state, questioning defendants, or taking witness statements.[10]

[8] The European Convention on Extradition was adopted in Paris on December 13, 1957 (published in the Official Gazette of Bosnia and Herzegovina - International Treaties No. 04/2005). The Additional Protocol to the European Convention on Extradition was adopted in Strasbourg on October 15, 1975 (published in the Official Gazette of Bosnia and Herzegovina - International Treaties No. 04/2005). The Second Additional Protocol to the European Convention on Extradition was adopted in Strasbourg on March 17, 1978 (published in the Official Gazette of Bosnia and Herzegovina - International Treaties No. 04/2005) – hereinafter: the European Convention on Extradition.

[9] *Pravni leksikon*, *op. cit.*, pp. 712-713.

[10] For forms of international criminal legal assistance, see: Sladoje, N: *Praktikum za pružanje međunarodne pravne pomoći u kaznenim stvarima*, JP NIO, Official Gazette BiH, Sarajevo, 2012., pp. 31-32 and Krapac, D: Međunarodna kaznenopravna pomoć, *op. cit.*, pp. 94-130.

The development of this legal mechanism has undoubtedly been influenced by the rise in criminal offenses associated with international crime, necessitating enhanced cooperation with other countries. This need ultimately led to the conclusion of numerous bilateral international treaties between states that regulate the extradition process.[11] Effective cooperation between states reflects their political will and determination to combat various forms of unlawful behavior that threaten international security. In other words, fleeing to another country or crossing borders should not serve as an obstacle to prosecuting an offender in the state where the crime was committed.

However, despite being an essential legal mechanism, extradition is often accompanied by the issue of (non-)extradition of a state's own nationals. This presents a challenge to fully executing the extradition process and prosecuting the offender in the state where the crime was committed. Article 6 of the European Convention on Extradition explicitly provides that contracting parties have the right to refuse to extradite their own nationals. The reasons often cited to justify a state's refusal to extradite its nationals have historical roots and are primarily based on the principle that a state has both the right and duty to protect its citizens from the application of foreign criminal law. This is often justified by factors such as language barriers, unfamiliarity with the legal system of the other state, and the challenges of resocialization in a foreign country during the enforcement of a sentence, among others.[12] Such justifications, despite the conclusion of numerous international treaties, reveal a lack of trust in the other state and express open doubts about the fairness of proceedings before the judicial authorities of the other country.[13] Under the pretext of such reasons, the extradition of a state's own nationals has become a so-called "absolute" obstacle to their extradition. As a result, only foreign nationals or stateless persons can be extradited, while the extradition of a state's own nationals is explicitly prohibited.[14] On the other hand, it is reasonable to question why distrust in the judicial system of another country serves as the primary basis for prohibiting the extradition of a state's own nationals, yet this same distrust does not apply to the extradition of foreign nationals. Logically, the issue of trust or distrust should be consistent for all individuals, not just for a state's own citizens.[15] Moreover, extradition procedures have proven to be quite complex and slow, with their effectiveness falling short of expectations. This was one of the key reasons why EU member states sought to adopt an alternative and more efficient solution.

A. Mutual Legal Assistance in North Macedonia and Compliance with the EU acquis

As negotiations for EU membership resume, North Macedonia is diligently working to implement the necessary reforms outlined in Chapters 23 and 24 of the EU accession talks. These reforms involve adapting the Macedonian legal framework to ensure the successful transposition of key EU directives, including the European Investigation Order (EIO) and the framework decision on the European Arrest Warrant (EAW). Chapter 24 of the EU accession negotiations,

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[11] Hržina, D; Rošić, M; Stipišić, LJ: *Postupci izručenja u Republici Hrvatskoj – praktični aspekti*, Hrvatski ljetopis za kazneno pravo i praksu, br. 2/2012, Zagreb, pp. 843-844.

[12] Primorac, D; Buhovac, M; Pilić, M: *Teorijski i praktični aspekti pravosudne suradnje Hrvatske i Bosne i Hercegovine u postupcima izručenja vlastitih državljana*, Godišnjak Akademije pravnih znanosti Hrvatske, br. 1., Zagreb, 2020., pp.16-18.

[13] Krapac, D: *Novi Zakon o međunarodnoj pravnoj pomoći u kaznenim stvarima: načela i postupci*, Hrvatski ljetopis za kazneno pravo i praksu, br. 2/2005, Zagreb, pp. 652-653.

[14] An example of quality judicial cooperation is the Agreement between Bosnia and Herzegovina and Croatia on Extradition, with the greatest progress made in the possibility of extraditing nationals for certain criminal offenses. For more on this, see:Primorac, D; Buhovac, M; Pilić, M: *op. cit.,* pp. 24-26.

[15] Primorac, D; Buhovac, M; Pilić, M: *op. cit.,* pp. 17.

which deals with justice, freedom, and security, emphasizes the need for the harmonization of North Macedonia's laws with EU standards. This process of harmonization aims to establish a robust legal framework, providing legal guarantees and ensuring the continued and documented success of the country's institutions. Ultimately, the goal of these reforms is to foster effective judicial cooperation that can support the detection, investigation, and prosecution of criminal cases, particularly in relation to transnational organized crime. Judicial cooperation in criminal matters, especially in an EU context, relies heavily on the recognition of judicial decisions across borders. This requires harmonization of both substantive and procedural laws, as well as the enforcement of institutional frameworks that facilitate cooperation. It is important to note that the EU does not demand complete unification of member states' laws but rather focuses on the establishment of effective mechanisms that promote smooth and ongoing cooperation between states.[16] These mechanisms are designed to prevent conflicts of jurisdiction and to ensure mutual respect for the actions taken and decisions made by the judicial authorities of different countries. The Republic of North Macedonia, in particular through the Ministry of Justice, is implementing continuous reforms that align the country's legal framework with EU requirements. As part of this effort, the country has ratified relevant international instruments, conventions, and additional protocols related to international judicial cooperation, many of which reflect the principles that underpin EU regulations, decisions, and directives. The current legal framework in North Macedonia provides a solid foundation for cooperation in criminal matters, particularly through the Law on International Cooperation in Criminal Matters[17] and the revised Law on Criminal Procedure[18], which has been in effect since 2013. These legal tools have facilitated successful inter-institutional cooperation, involving central-level bodies working in tandem with police, judicial institutions, and penitentiaries. North Macedonia is also increasingly engaged in international cooperation, particularly with Europol and Eurojust, in the fight against organized crime and other serious criminal offenses. The alignment of North Macedonia's legislation with EU measures, such as the European Arrest Warrant, has been achieved through comprehensive reforms, with further harmonization expected as the country progresses toward full EU membership. One of the key areas of focus for North Macedonia's legal reforms is the principle of mutual recognition, which plays a crucial role in ensuring effective judicial cooperation. The country has fully aligned its legislation with EU instruments related to mutual recognition, including the European Convention on Mutual Legal Assistance in Criminal Matters, which is directly incorporated into the national Law on International Cooperation in Criminal Matters. This alignment enables North Macedonia to recognize and enforce foreign court decisions, execute the transfer of convicted individuals, and harmonize practices regarding the sentencing, confiscation of proceeds from crime, and compensation for victims. In addition, North Macedonia is fully compliant with EU measures related to the European Arrest Warrant, although these provisions will only become applicable once the country officially joins the EU.[19] However, the country's legal framework already supports an abbreviated extradition procedure, consistent with the European Convention on Extradition, and is poised to apply the European Arrest Warrant once membership is secured. Similarly, significant progress has been made in the area of confiscation

[16] European Commission. (2024). *Report on the Progress of North Macedonia's EU Accession Negotiations*.
[17] Law on International Cooperation in Criminal Matters of North Macedonia, Official Gazette of North Macedonia nm. 124, 2010. Accessible at: https://www.slvesnik.com.mk/Issues/CCC73CC114432D48894FBFB9A43BDD92.pdf
[18] Law on Criminal Procedure of North Macedonia, Official Gazette of North Macedonia nm. 150/2010.
[19] Agreement on Cooperation between Eurojust and the Former Yugoslav Republic of Macedonia, 28 November 2008, Document ID 2008/00114,accessible at: https://www.eurojust.europa.eu/document/agreement-cooperation-between-eurojust-and-former-yugoslav-republic-macedonia

and freezing of property related to criminal activity, with North Macedonia's laws fully aligned with EU frameworks that aim to combat money laundering, trace illicit assets, and enforce the recovery of crime-related property.

In terms of cooperation with Eurojust, North Macedonia has made significant strides in preparing for future collaboration, as evidenced by a mutual cooperation agreement signed in 2009. This agreement lays the groundwork for effective engagement with Eurojust once North Macedonia becomes an EU member state. The country's legislation already meets the EU standards for the processing of serious crimes and the handling of personal data in a manner consistent with EU regulations. Additionally, North Macedonia's alignment with EU standards extends to the creation of joint investigative teams, with a focus on organized crime and corruption. The country's cooperation with Europol and Eurojust is ongoing, with national representatives participating in key meetings and joint investigations, ensuring that North Macedonia is well-prepared for its eventual EU membership. Looking ahead, the successful implementation of the European Investigation Order will be a crucial next step in North Macedonia's legal reform process. The country is committed to ensuring that the transposition of the EIO directive into national legislation is carried out smoothly, primarily through amendments to existing laws rather than through the creation of entirely new legal frameworks. This process will require active involvement from judges, prosecutors, lawyers, and law enforcement personnel, with pilot projects serving as an important tool for testing and refining the new mechanisms. Early and ongoing training for legal professionals will be essential to ensure that the justice system is ready to handle the increased demands of transnational cooperation and the implementation of the European Investigation Order. Through these efforts, North Macedonia aims to strengthen its position as a key partner in the EU's ongoing efforts to combat organized crime and terrorism, ensuring that its legal framework is fully aligned with EU standards and capable of facilitating efficient and effective judicial cooperation.

In the context of North Macedonia, the introduction and future application of the European Arrest Warrant is of great importance. As part of its ongoing judicial reforms, North Macedonia is aligning its legislation with the EU's standards to facilitate judicial cooperation in criminal matters. While the country has implemented substantial reforms in the area of international legal assistance, including the ratification of the European Convention on Mutual Assistance in Criminal Matters and the European Convention on Extradition, the full application of the European Arrest Warrant will only be possible once North Macedonia joins the EU. Before the adoption of the EAW system, the primary instrument for international judicial cooperation in criminal matters between states was extradition. Extradition is a legal process by which one state formally requests the surrender of a person for prosecution or the enforcement of a sentence. However, extradition has been criticized for its complexity and slow pace. It is often hindered by issues such as the non-extradition of nationals and lengthy negotiations between states, leading to inefficiencies in the prosecution of cross-border criminal activity. North Macedonia, like many other non-EU countries, still relies on extradition as the primary mechanism for cooperation with EU member states and third countries. The Law on International Cooperation in Criminal Matters governs extradition in North Macedonia, establishing a framework that aligns with EU regulations and treaties, such as the European Convention on Extradition and its additional protocols. While extradition remains an essential tool for judicial cooperation with third countries, its limitations in terms of speed, complexity, and the non-extradition of nationals are evident. This is particularly relevant when comparing extradition with the EAW system, which has significantly reduced these barriers within the EU.

One of the most critical advantages of the EAW system is the elimination of the principle of double criminality for 32 listed offenses, meaning that the executing state cannot question whether the offense is punishable under its own laws. The principle of mutual recognition ensures that an arrest warrant issued in one EU state will be executed promptly in another, as long as the conditions of the Framework Decision are met. In contrast, extradition still requires the requesting state to demonstrate that the alleged offense is punishable under both jurisdictions' laws, making the process more complicated and time-consuming. The issue of nationality, however, remains a significant challenge for both extradition and the EAW system. Historically, many states, including those in the EU, have maintained the principle of non-extradition of nationals, meaning they would not surrender their own citizens to foreign jurisdictions. This principle has led to a reluctance to extradite nationals even when the request meets all the legal requirements. The EAW system, however, has addressed this issue by allowing for the surrender of nationals to other EU member states, provided that the requested state respects its obligation under the principle of mutual recognition. In North Macedonia, the Law on International Cooperation in Criminal Matters includes provisions for extradition, but the principle of non-extradition of nationals continues to apply in certain cases. This creates a tension between North Macedonia's obligations under international treaties and its constitutional commitment to protect its citizens from foreign legal systems. The country's legal framework is gradually evolving to address this challenge, but as long as North Macedonia is not an EU member, the EAW remains inapplicable.

3. European Arrest Warrant

As previously emphasized, the traditional extradition process revealed significant shortcomings, particularly its complexity, lengthy duration, and inefficiency.[20] For this reason, EU member states had been contemplating for some time the need to replace the extradition process with a new system that would be faster, simpler, and more modern. On this path, it was necessary to take a concrete step forward, based on a high level of trust between EU member states and adherence to the principle of mutual recognition of judicial decisions in criminal matters.[21] It was necessary to create fast and effective judicial cooperation among EU member states, curb and prevent criminal activities, enhance the protection of human rights, and ultimately ensure freedom, justice, and security across the EU.[22] The result of this effort was the adoption of the EU Council Framework Decision 2002/584/JHA of June 13, 2002, on the European Arrest Warrant and the surrender procedures between member states (hereinafter: Framework Decision 2002/584).[23] Accordingly, with the adoption of Framework Decision 2002/584, extradition, as the oldest form of international criminal legal assistance, was replaced by the European Arrest Warrant (EAW).[24] This Framework Decision was later amended by the EU Council Framework Decision

[20] Primorac, D: *Europski uhidbeni nalog – teorija i praksa*, 1. izdanje, Alfa, Zagreb, 2018., pp. 12-13, 19.

[21] Đurđević, Z: Europski sud pravde i legitimitet europskog uhidbenog naloga, Hrvatski ljetopis za kazneno pravo i praksu, br. 2/2007, Zagreb, pp. 1021-1024.

[22] Turudić, I; Pavelin-Borzić, T; Bujas, I: *Europski uhidbeni nalog s primjerima iz sudske prakse*, Novi informator, Zagreb, 2014., pp. 14. Also see: Čule, J; Hržina, D: *Primjena Europskog uhidbenog naloga u Republici Hrvatskoj – očekivanja i stvarnost,* Hrvatski ljetopis za kazneno pravo i praksu, br. 2, Zagreb, 2013, pp. 717. Where the authors emphasize "… Therefore, there are no longer relationships between sovereign states, but only relationships between the judicial authorities of member states based on mutual trust…".

[23] *Council Framework Decision of June 13, 2002, on the European Arrest Warrant and Surrender Procedures Between Member States 2002/584/JHA (Official Journal of the European Union, OJ L 190, July 18, 2002).*

[24] About the mishaps fothe EAW see: Blackstock, J: *The European Arrest Warrant – Briefing and Suggested Amendments*, New Journal of European Criminal Law, First Published March 1, 2010, pp. 16-30.

2009/299/JHA of February 26, 2009, amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, and 2008/947/JHA to strengthen the procedural rights of individuals and to promote the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (hereinafter: Framework Decision 2009/299).[25]

The most important provisions of Framework Decision 2002/584, in contrast to the earlier traditional form of extradition, introduce five key innovations:[26]

- *Direct communication* between the judicial authorities of EU member states in the process of issuing and executing the EAW (ensuring faster and more reliable communication).
- *Decisions on surrender are made exclusively by the judiciary*, excluding any involvement of the executive branch. In the traditional extradition process, the judiciary decided in the first stage, but the final decision on whether to extradite an individual was made by the executive branch, such as the Minister of Justice.
- *Exclusion of the double criminality check for 32 specifically listed offenses,* meaning that the executing state is not permitted to verify double criminality for these offenses as listed in Framework Decision 2002/584, giving priority to the issuing state rather than the executing state.
- *Allowance for the surrender of own nationals*, ensuring equality for all EU citizens across the Union in accordance with the principle of mutual trust, which was not the case in traditional extradition.
- *Shorter deadlines for decisions on executing the EAW and surrendering the requested person,* contributing not only to a faster process but also to greater mutual trust among EU member states in their respective criminal justice systems.

It is important to emphasize that Framework Decision 2002/584, and its implementation into national legislation, applies exclusively to EU member states. In contrast, relations between EU member states and non-EU countries (so-called third countries) are governed by their respective laws on international legal assistance in criminal matters and applicable international treaties. The definition of the European Arrest Warrant (EAW) is provided in Article 1(1) of Framework Decision 2002/584, which states that the EAW is a judicial decision issued by a member state for the purpose of arresting and surrendering a requested person by another member state for the conduct of criminal prosecution, execution of a custodial sentence, or enforcement of a detention order. All EU member states were obligated to implement Framework Decision 2002/584 into their national legislations.[27] However, from the very outset, certain issues arose in many states. Implementing Framework Decision 2002/584 required amendments to constitutional

[25] *Council Framework Decision 2009/299/JHA of February 26, 2009, amending Framework Decisions 2002/584/JHA, 2005/2014/JHA, 2006/883/JHA, 2008/909/JHA, and 2008/947/JHA to strengthen procedural rights of individuals and encourage the application of the principle of mutual recognition of judgments rendered in absentia.* (https://eur-lex.europa.eu/legal-content/HR/TXT/HTML/?uri=CELEX:32009F0299&qid=1720419774427). For more on Framework Decision 2002/584, see: Klimek, L: European Arrest Warrant, Springer International Publishing, Cham, 2015, pp. 31-49, and Plachta, M; Van Ballegooij, W: The Framework Decision on the European Arrest Warrant and Surrender Procedures Between Member States of the European Union, in: Handbook on the European Arrest Warrant, T.M.C. Asser Press, The Hague, 2005, pp. 13-39.

[26] Krapac, D: *Okvirna Odluka Vijeća (Europske unije) od 13. VI. 2002. godine o europskom uhidbenom nalogu (EUN) i postupcima predaje između država članica (2002/584/PUP*), Zbornik radova Pravnog fakulteta u Zagrebu, No. 5-6, Zagreb, 2014., pp. 984-986 and Primorac, D: Europski uhidbeni nalog – teorija i praksa, *op. cit.,* pp. 20-22.

[27] Primorac, D: *Europski uhidbeni nalog i privremena odgoda predaje traženih osoba zbog postojanja ozbiljnih humanitarnih razloga – aktualni primjeri iz sudske prakse*, Zbornik radova Veleučilišta u Šibeniku, Vol. 17 (1-2), Šibenik, 2023., pp. 41.

provisions prohibiting the extradition of a state's own nationals, which also meant breaking with the longstanding tradition of non-extradition of nationals. In this regard, Croatia amended its Constitution on June 16, 2010, introducing changes to Article 9(2) of the Croatian Constitution, which now states: "A Croatian national may not be expelled from the Republic of Croatia, nor may their Croatian citizenship be revoked, nor may they be extradited to another state, except when it is necessary to execute a decision on extradition or surrender made in accordance with an international treaty or the legal framework of the European Union."[28]

Furthermore, certain states, including Croatia, attempted to limit the application of the European Arrest Warrant (EAW), primarily due to the sensitivity surrounding the extradition of their own nationals. In this context, Croatia amended the Law on Judicial Cooperation in Criminal Matters with EU Member States (hereinafter: ZPSKSDC EU) on June 28, 2013, just three days before its accession to the EU on July 1, 2013[29] The amended law came into effect upon Croatia's accession to the EU and introduced a limitation regarding the application of the EAW. Specifically, it stipulated that the EAW would only be executed for criminal offenses committed after August 7, 2002.[30] This was clearly an attempt to circumvent EU legislation, including Framework Decision 2002/584, as the option to impose a temporal limitation on the application of the EAW was only available at the time of the adoption of Framework Decision 2002/584 in 2002. Specifically, under Article 32 of Framework Decision 2002/584, member states were allowed to issue a declaration, published in the Official Journal of the EU, stating that the EAW would not apply retroactively to offenses committed before a specific date. According to the Framework Decision, this date could not be later than August 7, 2002. Only three states—Austria, France, and Italy—exercised this option. Croatia, however, had the opportunity to make such a declaration during its accession negotiations but failed to do so. As a result, Croatia was not entitled to amend the ZPSKSDC EU to include such a limitation retrospectively.[31]

Due to these unjustified amendments, the European Commission intervened, making it clear to Croatia that such changes constituted a serious violation of EU law. As a result, Croatia proceeded with amendments to the ZPSKSDC EU, removing the provision that imposed a temporal limitation on the application of the EAW in Croatia. This change ensured that Croatia would no longer be exempt from extraditing its own nationals to other EU member states for crimes committed before August 7, 2002.[32] This change now allows the EAW in Croatia to be executed

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[28] *Constitution of the Republic of Croatian* (Official Gazette nos. 56/1990, 135/1997, 113/2000, 28/2001,762010, 5/2014).

[29] *The Law on Judicial Cooperation in Criminal Matters with EU Member States (Official Gazette Nos. 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, and 18/24).*

[30] Article 132.a, paragraph 3 of the Law on Amendments to the Law on Judicial Cooperation in Criminal Matters with EU Member States.

[31] Pavelin-Borzić, T; Turudić, I; Bujas, I: *Utjecaj Okvirne odluke o europskom uhidbenom nalogu na ustavne poretke država članica EU,* Informator, br. 6285, Zagreb, 2014., pp. 3-4. See also : Memo EC nm. 13/793 od 18. September 2013.: https://ec.europa.eu/commission/presscorner/detail/hr/MEMO_13_793

[32] Article 1 of the Law on Judicial Cooperation in Criminal Matters with EU Member States (ZPSKSD EU) (Official Gazette No. 124/13), which stipulates the repeal of the previous Article 132.a, paragraph 3 of ZPSKSD EU (Official Gazette Nos. 91/10 and 81/13). The amendment to this Law (including the repeal of this provision) came into force on January 1, 2014. See also the Proposal for the Law on Amendments to the Law on Judicial Cooperation in Criminal Matters with EU Member States, with the final draft of the law (September 2013), in which the Government of the Republic of Croatia, as the proposer of these amendments, stated the following: "...The Law on Amendments and Supplements to the Law on Judicial Cooperation in Criminal Matters with EU Member States was drafted based on the official translation of Framework Decision No. 2002/584/JHA of June 13, 2002, which should be noted as having been reviewed by linguist lawyers of the EU Council and is considered verified and final as such (published in the special edition of the Official Journal of the EU on October 29, 2012). According to the official translation, there was

for all criminal offenses for which it is permitted, regardless of when they were committed. It is evident that these amendments lasted only six months and ultimately caused more harm than benefit to Croatia—an entirely unnecessary situation. On the other hand, this example can serve as a lesson for other countries that are in the process of initiating or conducting EU accession negotiations. It highlights the importance of taking full advantage of the options provided by EU legislation, as these opportunities may no longer be available once the deadlines have passed. Despite certain initial challenges, Framework Decision 2002/584 has provided EU member states with an effective tool to ensure that offenders can no longer evade criminal prosecution or the enforcement of a sentence by crossing national borders, as was previously possible.[33] It quickly became evident that the EAW, facilitated by improved judicial cooperation among EU member states, has become a valuable and indispensable mechanism for maintaining freedom, security, and justice within the EU.[34] However, despite the increased efficiency of the EAW and improved judicial cooperation, efforts must continue to strengthen the level of trust among EU member states and to uphold the principle of mutual recognition of judicial decisions. This is essential to address the existing shortcomings in the application of the EAW, such as inconsistencies in applying grounds for refusal to execute an EAW, the need to improve prison conditions, ensuring judicial independence, enforcing procedural safeguards, and other related issues.[35] In any case, unlike the lengthy nature of the previous extradition process, according to statistical data from the relevant EU authorities, the EAW has significantly accelerated the surrender of requested individuals, as evidenced by the following indicators:[36]

Year	**With Consent (Days)**	**Without Consent (Days)**
2018	16.40	45.00

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no obstacle to introducing a time limit for the application of the European Arrest Warrant, as it incorrectly stated that 'each member state may, after the Council adopts this Framework Decision,' submit a declaration that temporally limits the application of the European Arrest Warrant. This error was corrected on August 20, 2013, when the correction of the translation was published in the Official Journal of the EU, which states that the above-quoted provision reads: 'each member state may, when adopting this Framework Decision by the Council, submit a declaration' limiting the application of the European Arrest Warrant. Therefore, when aligning with Article 32 of the Framework Decision, Croatia was of the opinion that the transitional provisions from that article could apply to the Republic of Croatia, especially since other EU member states had also implemented the time limitation of the application of the European Arrest Warrant in their national legislation. However, during technical consultations with the European Commission, it was clarified that the possibility of issuing a declaration on the time limitation for the application of the European Arrest Warrant existed solely at the time of the adoption of the Framework Decision by the Council. The European Commission also noted that Croatia could have requested a time limitation period for the application of the European Arrest Warrant or a derogation during the accession negotiations, which was not done." (https://www.sabor.hr/hr/prijedlog-zakona-o-izmjeni-zakona-o-pravosudnoj-suradnji-u-kaznenim-stvarima-s-drzavama-clanicama).

[33] *Report from the Commission to the European Parliament and the Council on the implementation of the Council Framework Decision of June 13, 2002, on the European Arrest Warrant and the surrender procedures between member states, No. COM (2020) 270 final, Brussels, July 2, 2020.* (https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:52020DC0270).

[34] *See the European Parliament Resolution of January 20, 2021, on the implementation of the European Arrest Warrant and the surrender procedure between member states (2019/2207 (INI))-* https://www.europarl.europa.eu/doceo/document/TA-9-2021-0006_HR.html

[35] *Ibid, pp. 7 i 8.*

[36] *Statistical data on the use of the European Arrest Warrant (EAW) and the speed of surrender are available at:*https://e-justice.europa.eu/90/HR/european_arrest_warrant

2019	16.70	55.75
2020	21.25	72.45
2021	20.14	53.72
2022	20.48	57.29

Table 1: EAW Surrender Timelines (2018-2022)

4. Simultaneous European Arrest Warrants and Extradition Requests – Article 16 of Framework Decision 2002/584

Although the scope of the EAW is limited to the territory of the EU and its member states, Framework Decision 2002/584 also addresses situations where a member state may receive both an EAW and an extradition request from a third country for a person located within its territory. The EAW and the extradition request may pertain to the same or different criminal offenses. Article 16 of Framework Decision 2002/584 does not prescribe specific rules as to which request or warrant should take precedence. Instead, it sets out criteria to be considered when deciding which of multiple requests for the same person to execute. These criteria include the seriousness of the offense, the place where the offense was committed, the timing of the issuance of the EAW and the extradition request, and whether the EAW was issued for the purpose of prosecution or the execution of a sentence or detention order. In making their decision, executing judicial authorities may also refer to the Guidelines for Deciding on Competing Requests for Surrender and Extradition (hereinafter: 2019 Guidelines).[37] The 2019 Guidelines outline five scenarios for deciding on competing requests.[38];

- *Scenario 1:* Two or more European Arrest Warrants (EAWs) for the same person for the prosecution of the same criminal offense(s).
- *Scenario 2:* Two or more EAWs for the same person for the prosecution of different criminal offenses.
- *Scenario 3:* Two or more EAWs for the same person, where one (or more) EAW(s) is for prosecution and one (or more) EAW(s) is for the execution of a custodial sentence or detention order related to different criminal offenses.
- *Scenario 4:* Two or more EAWs for the same person for the execution of two (or more) custodial sentences or detention orders related to different criminal offenses.
- *Scenario 5:* One or more EAWs and one (or more) extradition request(s).

Without delving into the first four scenarios, which can be applied *mutatis mutandis* to the fifth scenario, this section analyzes the situation involving one or more EAWs and one or more extradition requests submitted to an EU member state for the same individual who is a national of an EU member state. While the previous scenarios pertain to decisions regarding competing EAWs, this scenario requires an understanding of the differences between the EAW framework and the traditional extradition regime. Special attention must be paid to the nationality or EU

[37] Guidelines for Deciding on Competing Requests for Surrender and Extradition, October 2019, available at:https://www.eurojust.europa.eu/sites/default/files/assets/2019-10-guidelines-competing-extradition-surrender-eaw-hr.pdf

[38] Multiple requests are referred to as "competing" requests to indicate that these requests are not only simultaneous but also require a decision by the competent authority of the executing member state on which request should be (prioritized for) execution. Ibid, pp. 5.

citizenship of the requested person and specific bilateral or multilateral agreements. Regarding nationality, it is well established that in most states, the principle of non-extradition of nationals has historically prevailed, justified by the obligation of the state to protect its nationals from foreign judicial systems and regimes. However, the EAW has enabled the extradition of nationals to other EU member states. Today, states, as subjects of international law, increasingly aim to regulate their bilateral relations in the area of judicial cooperation in criminal matters by signing agreements with third countries and/or EU member states that allow for the extradition of their own nationals. The case law of the Court of Justice of the European Union (CJEU) has demonstrated that nationality can be a decisive factor when addressing an extradition request received simultaneously with an EAW in a member state. For instance, the CJEU, through the so-called Petruhhin doctrine, has provided guidance on this matter.[39] The *Petruhhin* doctrine established an obligation for EU member states that do not extradite their own nationals. When such a state receives an extradition request from a third country for the prosecution of an EU citizen who is a national of another member state, it must initiate a consultation process with the member state of the individual's nationality. This enables the state of nationality to prosecute its citizen via the EAW. These obligations, imposed on member states that do not extradite their nationals, are grounded in the principle of non-discriminatory treatment of both their own nationals and other EU citizens, in accordance with Article 18 of the Treaty on the Functioning of the European Union (TFEU).[40]

It is well established that an extradition request can be submitted for the purpose of criminal prosecution or the execution of a sentence or a measure involving deprivation of liberty. In this regard, the case law of the Court of Justice of the European Union (CJEU) is divided between cases concerning extradition requests to member states for prosecution and those for the execution of a sentence. The first and most prominent case in which the CJEU ruled on an extradition request for the purpose of prosecution in an EU member state is the Petruhhin case.[41] This was the first case in which the CJEU ruled that an EU member state receiving an extradition request concerning a citizen of another EU member state is obligated to initiate a consultation process with the member state of the individual's nationality. This allows the latter to prosecute its citizen through the EAW. The case concerned an extradition request from Russian authorities to Latvia for the extradition of Estonian national A. Petruhhin, who was accused of attempting to organize the trafficking of a large quantity of drugs. The Latvian Prosecutor General's Office approved the extradition to Russia. However, A. Petruhhin appealed the extradition decision, arguing that under the treaty between Estonia, Latvia, and Lithuania on legal assistance and judicial cooperation, he enjoyed the same rights in Latvia as Latvian nationals, including protection from unwarranted extradition. The CJEU determined that a member state is not obliged to provide every EU citizen who moves to its territory with the same protection from extradition it offers its own nationals. However, the state must implement all mechanisms of cooperation and mutual assistance provided under EU law in the area of criminal law, prioritizing the exchange of information with the member state of the individual's nationality. This allows the member state to issue an EAW for its national, thereby giving precedence to the EAW over the extradition request. Both serve the same ultimate goal: preventing impunity for individuals suspected of committing criminal offenses. Additionally, the CJEU held that when a member state receives an extradition request from a third country, it must ensure that extradition does not undermine the rights protected under Article 19 of the EU Charter

[39] See *infra*, note 40.
[40] Within the scope of the Treaty and without prejudice to any of their specific provisions, any discrimination on the basis of nationality is prohibited. Article 18 of the Treaty on the Functioning of the EU, OJ C 202/56.
[41] Judgment CJEU 6. September 2016., Petruhhin, C-182/15

of Fundamental Rights.[42] All subsequent cases related to extradition requests to an EU member state are based on the CJEU's decision in the *Petruhhin* case.[43] Regarding extradition requests for the execution of a sentence or the enforcement of a detention order addressed to a member state, the CJEU has ruled on such requests in two cases to date, including the case of *Raugevicius*.[44] And the case before the High Court ion Munich[45]). In the *Raugevicius* case, the CJEU followed the reasoning from the *Petruhhin* case but reached a different conclusion. This divergence arose because extraditions for the purpose of enforcing a sentence may conflict with the principle of *ne bis in idem* if the *Petruhhin* mechanism were applied, as the requested individual has already been convicted in a third country. The case involved a Lithuanian and Russian citizen who moved to Finland and had been living there for several years. After being convicted in Russia, Russian authorities issued an international arrest warrant in 2011 to enforce the custodial sentence. The CJEU decided that Raugevicius could serve the sentence in Finland, provided both the individual and the third country consented, thereby avoiding a breach of the *ne bis in idem* principle. Furthermore, the Court determined that the authorities of the requested state must establish whether there is a connection between the citizen of another member state and the member state to which the extradition request was submitted. If such a connection exists, Articles 18 and 21 of the Treaty on the Functioning of the EU (TFEU) stipulate that citizens of other member states may serve their sentence in the requested state under the same conditions as its nationals. The second case involved Bosnia and Herzegovina's extradition request to Germany for the enforcement of a custodial sentence. The individual in question was a citizen of Serbia, Bosnia and Herzegovina, and Croatia, who had been residing in Germany since mid-2017 and working there since 2020. In this case, the CJEU ruled that *Articles 18 and 21 TFEU must be interpreted to mean that a member state receiving an extradition request from a third country for the purpose of enforcing a custodial sentence against a citizen of another EU member state, where national law prohibits extradition outside the EU solely for its own nationals, and provides the possibility for the sentence to be enforced domestically with the third country's consent, must actively seek the third country's consent. The member state must use all available mechanisms of cooperation and assistance in criminal matters within its relationship with that third country. If such consent is not obtained, it does not preclude the member state from proceeding with the extradition of the EU citizen in compliance with its obligations under an international convention, provided that the extradition does not violate the rights guaranteed by the EU Charter of Fundamental Rights.*[46]

a. Existing solutions regarding simultaneous European Arrest Warrants and extradition requests

The previously outlined practice of the CJEU has proven to be ineffective, as noted in the Key Findings of the joint report by Eurojust and the European Judicial Network (hereinafter: EJN).[47] Dated October 27, 2020, the Key Findings were based on the analysis of 72 cases involving

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[42] No one shall be removed, expelled, or extradited to a country where there is a serious risk of being subjected to the death penalty, torture, or other inhuman or degrading treatment or punishment. Article 19(2) of the EU Charter of Fundamental Rights, OJ C 202/397.

[43] Decision CJEU 6. September 2017., Schotthöfer i Steiner v. Adelsmayra, C-473/15; CJEU Judgment od 10. April 2018., Pisciotti, C-191/16; CJEU Judgment od 2. April 2020., Russian Federation, C-897/19 PPU; CJEU Judgment od 17.December 2020., Generalstaatsanwaltschaft Berlin, C-398/19; CJEU Judgment od 12. May 2021., WS, C-505/19

[44] CJEU Judgment 13. November 2018., Raugevicius, C-247/17

[45] CJEU Judgment 22. December 2022., Generalstaatsanwaltschaft München, C-237/21

[46] Case: Generalstaatsanwaltschaft München, pp. 57.

[47] Engl. European Judicial Network

extradition requests from third countries for EU member state nationals. The main issues identified with such requests include uncertainty about which authority in the state of nationality to contact, which member state should ensure translation and bear the translation costs, and/or which instrument of judicial cooperation to apply to secure prosecution in the state of nationality. Other issues include varying practices regarding the scope of provided information, deadlines for responses and decisions, and the types of assessments conducted under the Petruhhin mechanism. Tensions also exist between obligations under EU law and bilateral and multilateral extradition treaties, as well as the use of several parallel channels for providing and transmitting information, often leading to duplication of efforts, uncertainty, and confusion. Among the report's key findings, it is noted that the consultation process outlined in the Petruhhin decision is widely viewed as a bureaucratic formality that is costly and time-consuming. The consultation mechanism can be useful in cases where criminal proceedings for the offense listed in the extradition request are ongoing in the member state of nationality. However, questions remain about what the CJEU's jurisprudence should be regarding extradition requests for the execution of custodial sentences when the requested individual is not a long-term resident of the requested member state.[48] Following the 2019 Guidelines, the Council adopted conclusions in December 2020, reiterating the obligation to respect existing commitments arising from international law and the need to combat the risk of impunity for the offense in question on the one hand. On the other hand, it emphasized the obligation of states to protect citizens of other member states as effectively as possible, in accordance with the principles of freedom of movement and non-discrimination based on nationality, from measures that could restrict their right to free movement and residence within the EU.[49]

Using case law and the efforts of EU bodies to find the best solutions for issues related to simultaneous European Arrest Warrants (EAWs) and extradition requests, new Guidelines of 2022 were adopted following the 2019 Guidelines. These apply both to cases where states invoke nationality exceptions and to all states regardless of such exceptions. The 2019 Guidelines specify that if the executing authority receives an extradition request for the purpose of prosecution and the member state of the executing authority has laws protecting its nationals from extradition, and the request concerns a national of another member state, the executing judicial authority must notify the member state of the individual's nationality. If that member state requests it, the individual must be surrendered to that state. Thus, if the executing authority is faced with two competing requests, and one of them is an EAW issued under the aforementioned cooperation mechanism (the notification mechanism from the *Petruhhin* case), the executing authority should prioritize that EAW over the extradition request. Similarly, if the extradition requests (or one of them) concern an EU citizen, the executing authority must confirm, before making any decision, whether the *Petruhhin* cooperation mechanism should be applied. If applicable, the decision under Article 16 of Framework Decision 2002/584 should be postponed until the cooperation procedure is completed. If the executing authority receives an extradition request for the purpose of enforcing a sentence, and the member state of the executing authority has laws protecting its nationals from extradition, and the request concerns a national of another member state, other cooperation

[48] Extradition of EU citizens to third countries, Main conclusions of joint report by the EJN, Available: https://www.eurojust.europa.eu/sites/default/files/assets/2020_11_24_extradition_report_overview.pdf
[49] Council Conclusions "European Arrest Warrant and Extradition Procedures – Current Challenges and Future Steps," OJ C 419 of December 4, 2020, pp. 23.

mechanisms under national or international law may need to be considered. For instance, the 1983 Convention on the Transfer of Sentenced Persons could be applicable in such cases.[50]

In addition, it is possible that in a member state, different authorities are responsible for deciding on the execution of an EAW and on an extradition request. In such cases, these authorities should collaborate when making decisions based on the outlined criteria. The states involved can also seek advice and coordination from Eurojust or the European Judicial Network (EJN). Furthermore, any criteria outlined in the applicable extradition agreement should also be considered. On the other hand, the 2022 Guidelines provide a detailed explanation of the scope of the Petruhhin mechanism, specifying when it is triggered, which bilateral and multilateral agreements it applies to, the steps that states must follow when invoking the nationality exception, response deadlines to notifications, and similar procedural requirements. The steps to be taken when a member state receives an extradition request from a third country concerning a citizen of an EU member state are illustrated below.

[50] Convention on the Transfer of Sentenced Persons from 1983, CETS no 112, Strasbourg, March 21, 1983

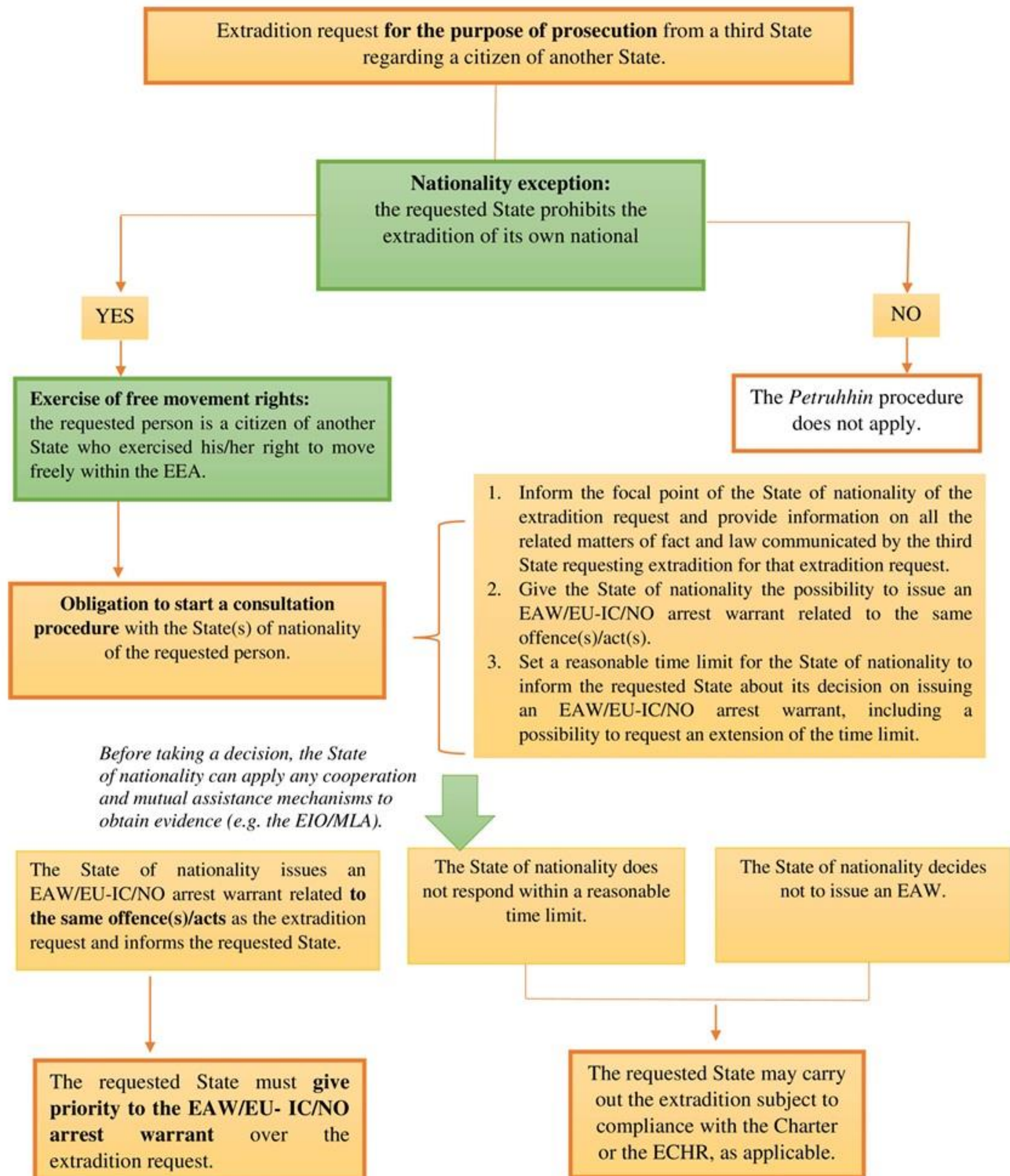

Photo 1.: Source: Guidelines 2022., Available at https://eur-lex.europa.eu/legal-content/ENG/TXT/PDF/?uri=OJ:C:2022:223:FULL

Following the 2022 Guidelines, a current case before the CJEU addresses a specific situation that has not previously been analyzed by the Court concerning this issue. The case

involves Dimas, a citizen of the Kingdom of Morocco who also holds Dutch citizenship. He was arrested in Spain while in transit. Morocco submitted an extradition request, and the Spanish court, through Eurojust, contacted the Dutch judicial authorities, providing them with Morocco's extradition request in case the Dutch authorities wished to issue a European Arrest Warrant (EAW). The Dutch judicial authorities responded that they would not issue an EAW for the offenses listed in Morocco's extradition request and that even if Dimas were arrested in the Netherlands, he would not be surrendered to Morocco due to his Dutch citizenship. Additionally, Dimas himself opposed extradition to Morocco, citing his EU citizenship and the Netherlands' response that they would not extradite him to Morocco. In this case, the Council decided to suspend the extradition proceedings to Morocco and referred the following questions to the CJEU: Should Articles 18 and 21 of the Treaty on the Functioning of the EU (TFEU) be interpreted to mean that the prohibition on surrendering nationals, as contained in a bilateral extradition treaty between an EU member state and a third country, should be extended to nationals of other EU member states who, due to their citizenship, object to extradition requested by a third country when they are exercising their right to free movement and are located in the territory of the member state from which extradition is requested? Additionally, the question was posed whether the decision of an EU member state (of which the requested person is a national) to refuse to issue an EAW for the offense that forms the basis of the extradition request—considering that the person would not be extradited due to their nationality if they were arrested in that state—obligates the member state from which the extradition is requested to refuse the third-country request, when the individual is present in the latter member state under their right to free movement.[51] We have yet to see the position that the CJEU will take on this case, with the 2022 Guidelines illustrated above potentially providing helpful insights in its response.

5. Conclusion Remarks

Starting with the instruments of judicial cooperation in criminal matters between states as subjects of international law exhibit significant differences between EU member states and third countries. Within the EU, the primary instrument for cooperation is the European Arrest Warrant (EAW), which was established through the implementation of Framework Decision 2002/584. This mechanism has streamlined the process of surrendering individuals between EU member states, replacing the traditional extradition process. In contrast, extradition remains the dominant tool for cooperation between EU member states and third countries. While the EAW has brought numerous advantages over traditional extradition, particularly in terms of speed and efficiency, the issue of nationality continues to act as a significant barrier to its full application. Nationality remains a decisive factor in many extradition decisions due to the constitutional principle of non-extradition of nationals, a principle that is deeply embedded in the legal frameworks of many countries. This principle is often invoked as a defense to prevent the surrender of a national to a foreign jurisdiction, even when a valid request for extradition or an EAW exists. The analysis of Article 16 of Framework Decision 2002/584, which addresses the transfer of requests for extradition from third countries to an EU member state for the extradition of an EU citizen, highlights this tension between the desire for efficient cross-border judicial cooperation and the protection of national sovereignty and constitutional principles. Furthermore, the case law of the Court of Justice of the European Union (CJEU) has played a crucial role in shaping judicial cooperation within the EU, particularly through the development of the *Petruhhin* doctrine. This doctrine has introduced a mechanism of consultation when an EU member state receives a request

[51] Case C-402/23 on June 28, 2023.

for extradition from a third country regarding an individual who is a national of another EU member state. The guidelines and decisions stemming from this case law have reinforced the principle of mutual recognition and cooperation between EU member states, but they also raise important questions about the balance between these principles and the rights of individuals, particularly in relation to the protection of their fundamental rights, including the right to free movement and protection from unjustified extradition.

Despite these advancements, several issues remain unresolved. The CJEU's future decisions will likely provide clearer answers to questions regarding the application of the EAW and extradition in cases where nationality is involved, as well as the scope of EU law in addressing the challenges posed by competing extradition and EAW requests. Additionally, the practicalities of how EU member states should navigate their bilateral and multilateral extradition obligations with third countries, while respecting EU legal principles, remain complex. As the EU continues to evolve as a legal and political entity, it will be crucial to refine the mechanisms of judicial cooperation to address these challenges and ensure that they serve the overarching goals of justice, security, and the protection of fundamental rights across the EU and beyond. Having this in mind, while the European Arrest Warrant has significantly improved judicial cooperation among EU member states, challenges related to nationality exceptions, competing requests for extradition, and the protection of citizens' rights continue to persist. It is evident that the current legal frameworks, bolstered by the CJEU's case law and guidelines, have yet to resolve all the complexities involved. However, the continued development of EU jurisprudence and further refinement of judicial cooperation mechanisms will be essential in overcoming these challenges and ensuring the effective application of international justice in the future.

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СИМУЛТАНИ ЕВРОПСКИ НАЛОЗИ ЗА АПСЕЊЕ И БАРАЊА ЗА ЕКСТРАДИЦИЈА МЕЃУ ЗЕМЈИТЕ-ЧЛЕНКИ НА ЕВРОПСКАТА УНИЈА И ТРЕТИ ЗЕМЈИ ПРЕКУ СУДСКАТА ПРАКТИКА НА СУДОТ НА ПРАВДАТА НА ЕВРОПСКАТА УНИЈА И НЕЈЗИНИТЕ ИМПЛИКАЦИИ ЗА СЕВЕРНА МАКЕДОНИЈА

Апстракт

Екстрадицијата е најстариот облик на меѓународна кривично-правна помош и претставува единствен инструмент за судска соработка со земји кои не се членки на Европската унија, односно трети земји. Во рамките на земјите-членки на ЕУ, овој инструмент е заменет со Европскиот налог за апсење, воведен од Советот на ЕУ преку Рамковната одлука 2002/584/ЈНА од 13 јуни 2002 година, за Европскиот налог за апсење и процедурите за предавање меѓу земјите-членки. Со имплементирање на Рамковната одлука во националните законодавства на земјите-членки на ЕУ, постапката за предавање (*поранешно екстрадиција)* на бараните лица е поедноставена и забрзана, што значително придонесува за поефикасна и поодлучна борба против криминалот. Овој труд се осврнува на конкретно прашање во врска со примената на Европскиот налог за апсење, имено процесот на одлучување во однос на конкурентските барања кога една земја-членка истовремено добива и европски налог за апсење од земја-членка на ЕУ и барање за екстрадиција од трета земја со фокус на Северна Македонија. Нормативните решенија се дополнети со судската практика на Судот на правдата на Европската Унија, која е претставена во овој труд, како и со насоки насочени кон решавање на прашања кои не се регулирани со Рамковната одлука.

Клучни зборови: *меѓународна кривична правна помош, екстрадиција, рамковна одлука, европски налог за апсење, судска пракса*