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RESEARCH ARTICLE

European Arrest Warrant and Protection of Human Rights: Problem Questions of Application in Context Practice of the CJEU

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ABSTRACT

The relevance of the work is determined by the importance of applying the relevant norms of criminal and judicial and international law of the EU member states to achieve the maximum degree of consistency in the application of the EAW procedure in the EU and compliance with European standards in the field of protection of individual rights and freedoms. The purpose of the article is to study the problems of the application of the EAW institution of the European arrest warrant through the prism of the implementation of the Framework Decision of the European Council "On the European arrest warrant and procedures for the transfer of offenders between member states" of 2002 and to analyze the decisions of the CJEU in the context of determining the balance between compliance with the principle of mutual recognition and protection of human rights. Both the negative and positive experience of the EU regarding the application of the EAW of the European arrest warrant are analyzed, as well as its impact on the system of international cooperation in the field of law enforcement, the mandatory and optional grounds for non-compliance with the EAW procedures are revealed, the conditions of applicability of the "ne bis in idem" principle are indicated. It has been established that in the EU countries systematic facts of violation of basic rights and freedoms of the individual are actualized, this is evidenced by the conclusions of the ECtHR and the decisions of the CJEU. It was concluded that studying the practice of applying the EAW procedure will make it possible to prepare the legal system of Ukraine for further steps of in-depth cooperation with the EU in law enforcement activities and to develop recommendations for the protection of individual rights in Ukraine.

INTRODUCTION

The unceasing processes of globalization, internationalization of crime and problems in the activities of law enforcement structures of the countries of the European Community organically determined the objective necessity of transformation of international relations in the system of criminal justice, oriented on active cooperation between member states, which reflects the actual concept of integration in this field of law enforcement. One of the effective and efficient mechanisms of such law enforcement cooperation is the European Arrest Warrant (EAW). This institute helps in each individual case to ensure the inevitability of criminal liability and punishment of the person who committed the criminal offense. In particular, the above is important for the development of relations between Ukraine and the European Union in the context of the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy

Community and their member states, on the other hand, which the Verkhovna Rada of Ukraine ratified on 16 September 2014.

The EAW is one of the most important tools for reforming the system of international cooperation in law enforcement based on the principle of mutual recognition of court decisions. But its application in the EU states as an important legal instrument faced a number of problems, primarily of a practical nature. This issue is still insufficiently researched at the scientific level and needs theoretical improvement and specification for further implementation, taking into account the practice of the ECtHR and the decisions of the Court of Justice of the European Union (CJEU) in the context of determining the balance between compliance with the principle of mutual recognition and the protection of human rights. Thus, the goal of the Council of Europe is to achieve greater unity among its members through the support and implementation of human rights and fundamental freedoms arising from the European Convention on Human Rights.

The issue of doctrinal study of the problems of protection of the rights and freedoms of individuals by judicial and law enforcement bodies was paid attention to by both Ukrainian and foreign scientists in the context of such a form of cooperation of states in law enforcement activities as the application of EAW. The theoretical and applied work of foreign jurists in this area is of great interest. Thus, some researchers indicate that the practice of the European Court of Human Rights remains insufficiently studied and despite the extremely important need for a proper balance between the observance of the principle of mutual recognition and the protection of human rights in the European Union in the context of the application of the EAW (Daminova, 2022).

LITERARY REVIEW

Some scholars have examined EU case law relating to the rule of law on the issue of enforcement of EAWs issued by Polish courts (Saganek, 2020). Other researchers have studied the use of EAW in the Polish criminal justice system (Klaus W et al., 2021), some scholars have revealed the application of EAW in European judicial cooperation (Alegre and Leaf, 2004); others examined the problematic issues of the application of the arrest warrant, terrorist offenses and extradition agreements in the context of the evaluation of the EU's main criminal law measures against terrorism (Wouters, and Naert , 2004) etc. The scientific works of Ukrainian scientists regarding the study of individual issues of this issue deserve attention. Thus, some researchers studied aspects of the implementation of the EAW as an institution of criminal law of the European Union (Grytskiv, 2014) , other researchers studied individual issues of protection of the rights of "extradited" persons in the practice of the European Court of Human Rights (Nesterenko, 2008), and also studied questions about taking into account the practice of the ECtHR were studied by individual scientists in the context of realizing the individual's right to judicial protection (Shevchuk, O. et al., 2024), human right to access to public information and ECtHR practice (Shevchuk, O. et al., 2023) etc.

Emphasizes the relevance of the investigated issues and the importance of the development of national law, since Ukraine is on the path of European integration, an important part of which is the harmonization of Ukrainian legislation with the law of the European Union, as well as in the conditions of martial law in Ukraine in connection with the full-scale invasion of the russian federation on the territory of the state 24.02.2022. In particular, the study of the problems of EAW application in the EU member states will make it possible to prepare the legal system of Ukraine for further steps of in-depth cooperation with the European Union in the field of law enforcement.

Therefore, the introduction of the EAW institute into legal practice, as a simplified mechanism for the transfer of accused and convicted persons from EU countries, could not fail to touch such an important issue as ensuring human rights (Daminova, 2022; Saganek, 2020). In particular, the conclusion of the European Council dated September 21, 2001 stated that the replacement of the existing system of "extradition" with an "arrest warrant" should be carried out in parallel with the provision of guarantees of basic rights and freedoms of individuals as social values. By the way, it was the possibility of violation of human rights due to the application of the EAW procedure that caused the greatest criticism of experts and scientists. Therefore, the issue of international cooperation in both the administrative-legal and criminal-legal spheres is relevant, the goal of which is to create peace, justice, space of freedom and security through the application of the EAW procedure.

MAIN OBJECTIVE. The main purpose of this study is to clarify the theoretical and practical aspects of the legal positions of the CJEU in the application of the EAW in the context of determining the balance between the observance of the principle of mutual recognition and the protection of human rights and to reveal the problematic aspects of the application of optional grounds for non-implementation of the EAW in individual Member States EU.

RESEARCH QUESTIONS. The relevant state of scientific development and existing practical problems led to the setting of research tasks, which boil down to the fact that, based on the analysis of scientific works, the legislation of Ukraine and the EU member states, and judicial practice: first, to characterize the theoretical justification and analyze the current experience of the EU member states in the field of legislative regulation of the mechanisms of international cooperation of law enforcement agencies with the application of EAW; secondly, to clarify the European international legal standards, as well as the legal positions of the CJEU in the context of determining the balance between compliance with the principle of mutual recognition and the protection of human rights when applying the EAW; third, to reveal problematic aspects of the application of optional grounds for non-compliance with the EAW; fourth, to substantiate the expediency of regulatory consolidation and to formulate specific proposals for amendments to legislation that may be useful for Ukraine and taking into account the experience of EU states in this area.

MATERIALS AND METHODS

The research was conducted on the basis of the analysis of legislative acts of Ukraine and EU member states and legal positions of the CJEU in the application of the EAW, as well as scientific works of Ukrainian and European scientists on public management and administration, administrative and international law. The empirical basis of the study was made up of the legislative acts of Ukraine and the EU member states and the decisions of the CJEU, which related to the application of problematic aspects of the application of optional grounds for non-compliance with the EAW when applying the EAW etc. During the preparation of the study and its conclusions, such methods of scientific research as dialectical, formal-legal, systemic, hermeneutic, comparative-legal, empirical, etc. The formal-legal method was used in the analysis of normative prescriptions of international treaties, legislative acts of Ukraine and European states in the field of application of EAW. The hermeneutic method came in handy when interpreting the content of legal norms of international treaties, legislative acts of Ukraine and European states in the context of the application of the EAW, as well as decisions of the CJEU in the context of the subject of the study. Dialectical and systemic methods contributed to the establishment of relationships between the normative provisions of European documents in this area of human rights, the practice of the CJEU and the national legislation of Ukraine and the EU member states in the context of the application of the EAW. Formal legal, hermeneutic and empirical methods were used in the analysis of the practice of the CJEU to establish the content of the legal positions of the Court and the relationships between them in the context of the subject of the study.

RESULTS AND DISCUSSION

Problematic aspects of the application of optional grounds for non-execution of the EAW.

Thus, since January 1, 2004, in the relations between the EU countries, the ineffective international search procedures of "extradition" were replaced by a specific procedural mechanism, the legal basis of which was the Framework Decision of the European Council "On the European Arrest Warrant and Procedures for the Transfer of Persons between Member States" dated 13 June 2002 (Saganek, 2020). According to the content of Art. 1 of the Framework Decision the content of the EAW is a court order issued by a participating country for the purpose of arresting and handing over to another member state a requested/wanted person for criminal prosecution or execution of a sentence or security measures related to deprivation of liberty (i.e. the application of measures that restrict or deprive a person of the right to freedom)

The following three features are important in the definition of EAW: (1) the term "extradition", traditionally associated with the role of the executive power, has disappeared, since from now on the executive power itself has disappeared as a participant in relations related to the transfer of a person from one state to another; (2) it is no longer about "the state that demands the extradition of the criminal" and "the defendant state", but about "EU member states", and the following articles of the Framework Decision speak about the "state executing the punishment of the criminal" and "the state-

executor" of extradition of a criminal"; (3) the current arrest warrant, however, as before in the case of extradition, applies to both accused and convicted persons (Grytskiv, 2014). It should also be noted that the EAW is issued in the form of a judicial decision - an act that belongs to the competence of the relevant judicial body of the EU member state, which indicates the judicial and not administrative nature of the said document, in contrast to the situation with extradition, when the final decision with the question of extradition of the person is accepted by the administrative body.

In the presented perspective, we consistently note that at first glance, a similar approach (according to which a decision made in one participating state in accordance with its national legislation is automatically accepted on the territory of another participating country) may raise a logical question about whether sovereign power is not lost, as an integral attribute of statehood, regarding control over the execution of court decisions on the territory of the relevant Party? (Peers, 2004). However, the principle of "mutual recognition" was not completely new to EU law enforcement practice. Mutual recognition, in particular, is a constitutive basis of law within the EU: (a) confirmed in the decisions of the Court of Justice of the EU and (b) reflected in the process of harmonization of the legislation of the participating states (Hartnell, 2002). Thus, a gradual expansion of the scope of application of the analyzed principle was foreseen by expanding its effect to court decisions in criminal cases. In particular, the adoption of the Framework Decision of June 13, 2002 introduced into international legal circulation one of the newest forms of cooperation between states in the fight against crime, which is terminologically designated as "surrender" (Jimeno-Bulnes, 2003).

One of the problematic issues is also the legal assessment of the optional grounds for non-compliance with the EAW, then it is possible to refer only to those that are transposed into the domestic law of the country of execution of the court decision, and their use involves research and assessment of the relevant circumstances with the following alternative: to execute an arrest warrant or to refuse its execution (that is, the issue is decided based on the discretion of the executive body of the state). In particular, the Register of optional grounds, the presence of which allows refusing to execute the EAW, is fixed in Article 4 of the Framework Decision. Yes, according to part 6 of this article, the executing judicial body can refuse to implement it, if the EAW was issued for the purpose of executing a prison sentence or applying a specified security measure/preventive measure (for example, detention) against a person who is or resides in the territory of the executing state party, or is a citizen or resident thereof, and this state undertakes to execute the sentence or decision on a security measure/preventive measure in accordance with national law.

In terms of the issue under consideration, the relevant legal positions of the Court of Justice of the European Union (CJEU) regarding the principle of equal treatment of its citizens are of both doctrinal and applied importance, primarily in the Wolzenburg case of October 6, 2009, C-123/08 . This case emphasizes that the period of residence in the Member State of the execution of the requested person under the EAW for the purpose of determining whether the requested person is present or residing in that State in accordance with Article 4(6) of the Council Framework Decision 2002/584/JHA of 13 June 2002 of the year on the European arrest warrant and transfer procedures between member states should be sufficient to establish that, in the light of other objective factors that characterize the specific situation of this person, he has connections with that state, which gives grounds for the conclusion , that serving his sentence in the form of deprivation of liberty in that state may contribute to his reintegration.

In the Wolzenburg case of October 6, 2009, C-123/08, it was also held that Article 4(6) of Framework Decision 2002/584 should be interpreted as meaning that the application of the ground for non-compliance provided for in this provision cannot depend on additional administrative conditions , such as having a residence permit of indefinite validity. It is also stated in this case that Article 12 of the European Convention in conjunction with Article 4(6) of the Framework Decision 2002/584 excludes the legislation of a Member State, which provides for the refusal to extradite its own nationals for the execution of the EAW, while in the transfer of nationals of other Member States , who are or reside in the implementing Member State, within the meaning of this provision of the Framework Decision 2002/584, may be refused only if they have a permanent residence permit for an indefinite period".

Also, forming an opinion in the Kozłowski judgment of July 17, 2008, C-66/08, the CJEU held that: "Article 4(6) of Council Framework Decision 2002/584/JHA of June 13, 2002 on the European arrest

warrant arrest and transfer procedures between Member States shall be interpreted as precluding the legislation of a Member State which precludes the execution of an EAW issued for the purpose of serving a custodial sentence if that EAW concerns one of its own nationals and it is not agrees to his transfer.

In the present case, the referring court must apply to Mr. Kozlovsky the provisions of its national law applicable to nationals of other Member States, in accordance with the purpose of Framework Decision 2002/584. The principle of agreed interpretation excludes the extension to citizens of other member states, in accordance with the principle of non-discrimination, of grounds for non-execution laid down in national legislation in favor of German citizens who oppose their transfer. A person is or is a resident of the executing Member State, within the meaning of Article 4(6) of Framework Decision 2002/584, if that person has the center of his main interests there, so that the execution of the sentence in that State appears necessary for his reintegration. In order to establish whether this condition is fulfilled, the executing judicial authority must examine all the facts relating to the individual situation of the person concerned. The fact that the person to whom an EAW is issued has interrupted his stay in the executing Member State and the fact that he is detained there is not a decisive or relevant criterion for the purposes of assessing whether he is staying or is a resident of this state within the meaning of Article 4(6) of the Framework Decision 2002/584. The fact that the person in question is in the executing Member State contrary to the national legislation governing the right of foreign nationals to enter and stay in the country, as well as the fact that he systematically commits crimes there, does not prevent him from having the status of a person who is in this state or is a resident of this state, if he is a citizen of the EU, unless a decision on expulsion has been made in relation to him, adopted in accordance with the legislation of the Community" ((p. 175).

Thus, we are talking about situations in which the requested person has established his actual place of residence in the EU member state of execution or acquired, after a stable period of stay in this country, certain ties with it, which have a similar level to those that are direct as a result of residence. In turn, the definition of "residence" automatically requires an overall assessment of various objective factors, including the duration, nature, conditions of the person's presence, as well as family and economic ties to the executing country.

The overall assessment of Articles 3 and 4 of the Framework Decision allows for a significant narrowing of the range of grounds for refusing to implement the EAW. Giving Member States considerable discretionary powers to decide on the implementation of the EAW could significantly reduce the scope of the Framework Decision and affect the effectiveness of the new legal mechanisms for extradition within the EU. Meanwhile, the stated goal in connection with the introduction of the EAW was to achieve a qualitative replacement of complex legalized extradition procedures with a simplified and operational algorithm for the transfer of persons, based on the direction of the principle of mutual recognition of court decisions issued by the participating state..

Thus, the CJEU in its decision in the case of Lopes da Silva Jorge dated September 5, 2012, C-42/11 stated the following conclusions. The first is that, without prejudice to the exercise of the discretionary powers they enjoy under EU law to determine the conditions to which the ground of non-compliance may apply, provided for in Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the EAW and transfer procedures between Member States may be subject in the case of nationals of other Member States residing or present in their territory, Member States shall implement Article 4(6) in such a way that, that the executing judicial authorities have the power to refuse to execute an EAW issued for the purpose of executing a sentence both against their own nationals and against nationals of other Member States who are present or resident in their territory, a power which they must be able to exercise in the light of the circumstances each individual case.

In addition, the CJEU in its decision in the Lopes da Silva Jorge case of September 5, 2012, C-42/11 also emphasized that in any case the principle of non-discrimination enshrined in Article 18 of the Treaty on the Functioning of the EU excludes national legislation, such as that which is at issue in the main proceedings, which limits the power to waive the execution of an EAW issued for the purposes of the execution of a sentence. in cases where the requested person is a French citizen and the competent authorities of France undertake to execute this sentence" (paragraph 62).

Therefore, the exclusion of the usual grounds for extradition for refusing to extradite a person from the area of application of the EAW was aimed at achieving this goal. In particular, this applies to cases of refusal of extradition for committing a crime of a political nature and failure to extradite one's own citizens. The outlined vector is adopted by many international legal acts regulating the "extradition" mechanism, first of all, by the European Convention on the Extradition of Offenders (Article 3 "Political Offenses"); (Convention on extradition. 2023). It should be noted that currently, the implementation of this guideline is facilitated by differences in the approaches of states when defining the concept of "political offense", differences in domestic legislation regarding the criminalization of certain socially dangerous acts. In turn, the described situation will have a potential negative consequence of a clear violation of the constitutional rights and freedoms of the accused and convicted. Similar cases have been repeatedly observed in Western European legal practice.

Note that the extreme concern of EU countries about the existence of global threats, the state of combating international crime, primarily terrorism, was clearly manifested in the process of adopting the 1996 Convention on Extradition, which, unlike other thematic international treaties, narrowed the scope of application of the concept of "exclusion of political crimes" and did not allow member states to refuse extradition only on the grounds that the "extradition" act is a crime of a political nature, related to a political crime or committed for political motives (Article 5). Another important innovation of this Convention was Art. 7 ("Extradition of citizens"), according to which extradition could not be refused, based on the fact that the wanted person is a citizen of the requested state (Van der Wilt, 1997).

Thus, significant modifications have taken place in the part of regulating the legal responsibility of one's own citizens. According to the Framework Decision, the very citizenship of the requested state is not considered as a mandatory basis for refusing to execute the warrant, as is the case in the "extradition" procedures of citizens of a certain country. If an EAW has been issued against a national of the executing Member State, enforcement may only be refused if the requested party undertakes to comply with the judgment/sentence or remand order in accordance with national law. Otherwise, own nationals are subject to transfer under the EAW (Part 6 of Article 4).

Moreover, the latter should be in close correlation with the legal guarantees of citizens' rights, which are provided in accordance with domestic law. For example, the domestic legislation of Germany from 2004, which implements the Framework Decision, violates the norms of the Constitution, in particular, Part 2 of Art. 16, which prohibits the extradition of one's own citizens. So, for example, from the position of the Federal Constitutional Court of Germany, the law on EAW nullifies sentence 1 of part 2 of article 16 of the Constitution, which establishes a ban on the extradition of a citizen, because it does not meet the condition of legality provided for in sentence 2 of the same part. Therefore, the fundamental right to prohibit the extradition of German citizens may be limited with some reservations, which are referred to in paragraph 2 of Article 16. Therefore, in general, the given document introduces disproportionate restrictions on the right to protection against extradition due to the fact that the legislator did not exhaust the opportunities provided to him by the Framework Decision in such a way that its implementation for the purposes of incorporation into national legislation showed maximum attention to the basic rights and freedoms of the citizen. It is for this reason that the extradition of German citizens is not possible until the legislator adopts a new act that implements the prescription of Part 2 of Article 2. 16 of the Basic Law (BVerfG, Order of the Second Senate).Therefore, in evaluating the judgment of the Federal Constitutional Court/Tribunal of Germany of 18 July 2005 on the EAW, for the sake of fairness it should be noted the basic idea that: (a) only the domestic law implementing the Framework Decision, not the prescriptions of the latter, was invalidated; (b) the settlement of the outlined problem is not related to the refusal to fulfill obligations regarding the application of the EAW institution.

Regarding the issue of implementation of European standards of human rights and freedoms in the procedure of execution of the EAW.

We note that the general standards of procedural guarantees of basic rights and freedoms of individuals in the activities of criminal justice bodies are provided for in such legal documents as the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, The Charter of Fundamental Rights of the European Union also in the relevant decisions of the European Court of Human Rights and the CJEU. At the same time, it should be taken into account that since certain

standards for the protection of the rights of individuals have been formed in the extradition mechanism, there are reasonable fears that a departure from "extradition" principles may lead to a narrowing of the system of reliable procedural guarantees in the process of transferring offenders by EU countries. Therefore, it would be quite consistent to conclude that the established procedural algorithm for the implementation of the EAW should be interpreted, including, through the prism of the provisions of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms.

Perhaps, this not least explains the introduction to the text of the Framework Decision "On the European Arrest Warrant and Transfer Procedures between Member States" of norms aimed at ensuring the rights of individuals when applying the EAW. In the Preamble and Part 3 of Art. 1 of the document enshrines one of the most important postulates of this document, according to which this decision respects basic rights and adheres to the fundamental principles recognized by Art. 6 of the Treaty on the European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular, in its section VI "Justice" (item 12). At the same time, we note that within the limits of the rights guaranteed by the specified section, a person to whom the EAW applies can apply to various legal means or mechanisms to challenge his transfer to an EU member state. It should be noted that the Framework Decision of the European Council "On the European arrest warrant and procedures for the transfer of offenders between member states" does not allow the transfer of a person in cases where he is threatened with a significant violation of fundamental rights (Vennemann N. , (2003).

Firstly, according to the content of paragraph 12 of the Preamble, nothing in the Framework Decision of the European Council "On the European Arrest Warrant and Procedures for the Transfer of Offenders between Member States can be interpreted as a prohibition to refuse the transfer of a person against whom an EAW has been issued, when the available objective information gives reason to believe that the specified warrant was issued for the purpose of criminal prosecution or punishment of a person on the basis of his sex, race, religion, ethnic origin, nationality, language, political beliefs, sexual orientation, or status of such a person because of any of these motives may be harmed.

Second, paragraph 13 of the Preamble provides that no person shall be expelled, expelled or extradited to a State where there is a serious threat of the death penalty, torture or other inhuman or degrading treatment or punishment. The given item is, in fact, a text reproduction of Part 2 of Art. 19 of the Charter of Fundamental Rights of the European Union, which, in turn, takes into account the provisions of previously adopted fundamental documents in the field of human rights protection, in particular, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment from December 10, 1984. The outlined approach, popularized on the European continent, in general does not present any problem for the practice of cooperation in the fight against crime within the EU.

At the same time, individual facts of torture and/or other prohibited forms of treatment are systematically established in the EU countries, which is evidenced, among other things, by the precedent practice of the ECtHR regarding the correct interpretation of the provisions of Article 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms. Illustrative examples in this aspect can be the decisions of the European Court in such cases as : «Z. and Others v. United Kingdom», 2001; «Iwanczuk v. Poland», 2001; «Mouisel v. France», 2002; «Kmetty v. Hungary», 2003; «Rivas v. France», 2004; «Farbtuhs v. Latvia», 2004.

A number of other safeguards are in place to protect the rights of persons subject to forced transfer in connection with the application of the EAW. In particular, the Preamble of the Framework Decision provides that it does not prevent member states from using national constitutional norms regarding due process of law, observance of the right to a fair trial, etc. Article 5 of the Framework Decision, which legitimizes the provision in certain cases of certain guarantees by the participating state that issued the EAW, plays a special role in the system of legal remedies for offenders.

For example, in the CJEU Aranyosi and Căldăraru joined cases of 5 April 2016, C-404/15 and C-659/15, it ruled: "Article 1(3), Article 5 and Article 6(1) of the Framework Decision should be interpreted so that if there is objective, reliable, specific and duly updated evidence concerning conditions of detention in the issuing Member State which demonstrate the existence of deficiencies

which may be systemic or general or which may affect particular groups of people, or which may affect certain places of detention, the executing judicial authority must determine specifically and precisely whether there are good reasons to believe that the person to whom the EAW applies. Who, extradited for the purpose of criminal prosecution or execution of a custodial sentence, will, because of the conditions of his detention in the issuing Member State, be exposed to a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, in case of its transfer to this EU member state.

For this purpose, the executing judicial authority must request the provision of additional information from the issuing judicial authority, which, if necessary, with the assistance of the central authority or one of the central authorities of the issuing Member State, in accordance with Article 7 of the Framework Decision, must send this information within the period specified in the request. In particular, the executing judicial authority must postpone the decision on the transfer of the person concerned until it receives additional information that will allow it to disregard the existence of such a risk. If the existence of such a risk cannot be removed from consideration within a reasonable time, the executing judicial authority must decide whether the extradition proceedings should be terminated. Therefore, if the competent judicial authority of the executing Member State has evidence of a real risk of inhumane or degrading treatment of persons detained in the territory of the country of issuance of the sentence, due to the general conditions of detention, it must follow the stable procedural algorithm set out in in the presented decision. An example is also the Lanigan judgment of 16 July 2015, C-237/15 CJEU.

DISCUSSION.

From this point of view, individual researchers quite reasonably formed separate types of cases related to the problematic transfer of persons and the protection of their violated rights in the application of EAW. The first group, in particular, includes those related to a possible violation of the fundamental rights of individuals. The second group of cases concerns individual situations, when the problem is the observance of the fundamental rights of a person. Moreover, some researchers correlate it with the general shortcomings of a certain justice system, others specifically with the conditions of imprisonment of persons. Regarding the general shortcomings of the justice system, according to some authors, this subgroup of cases related to fundamental rights (the right to a fair trial) is of a large-scale nature, which leads to the leveling of minimum guarantees that are the basis of mutual trust between the Parties of the states EU. Therefore, the only optimal course of action for the executing judicial authority is to actually fail to enforce the EAW, as neither the transfer of the requested person nor its enforcement would be acceptable solutions, and would mean relying on a system without the necessary minimum safeguards (Espina, 2020).

In other situations, poor conditions of detention in the extraditing state create an obstacle to their transfer. In essence, the CJEU has repeatedly held that when the conditions of detention to which a person subject to the EAW is to be faced are considered to endanger their fundamental rights (the risk of being subjected to inhuman or degrading treatment, etc.), the executing authority may not make a decision or postpone the transfer until the proper conditions are created (Espina, 2020).

In particular, some researchers emphasize that the presumption of equivalent protection of fundamental rights in each and every EU member state is thus not final, although, given the fundamental nature of the principle of mutual recognition, it can be refuted and limited only in exceptional circumstances. Therefore, it is necessary to find a balance between the effectiveness of judicial cooperation and the protection of these individual rights. Pursuing the goal of simplifying and speeding up judicial cooperation by creating an exhaustive list of grounds for non-compliance, the EAW at the same time organically provides for a measure - the transfer of persons within the framework of criminal proceedings - which concerns a large number of fundamental human rights. Although Articles 4 and 5 of the Framework Decision do not explicitly refer to human rights violations as a ground for refusal to enforce the EAW, a number of EU Member States (eg Ireland) have adopted a well-defined ground for refusal in the case of a fundamental violation of individual rights (Mirandola S., 2018). Therefore, the "principle of mutual recognition" on which the modern EAW system is based is itself based on the mutual confidence of the EU member states that their national legal systems are capable of providing not only equivalent but also effective protection of the fundamental rights of the individual recognized in EU levels.

Enforcement of the EAW by a competent judicial authority may, in accordance with the applicable law of the executing Member State, also depend on a specific condition. For example, if the criminal offense for which the EAW was issued is punishable by life imprisonment/life imprisonment, the enforcement of this EAW may potentially depend on the presence (absence) of effective mechanisms in the legal system of the issuing State Party: (1) review of the imposed punishment or preventive measure upon request or not later than after 20 years; (2) the application of amnesty measures (aimed at non-execution of the sentence or measure), in respect of which the person (offender) has the right to submit an application in accordance with the legislation or practice of the state that issued the sentence.

It should be emphasized that previously adopted extradition treaties, in particular, the European Convention on the Extradition of Offenders of December 13, 1957, did not include any provisions limiting the extradition of persons for crimes punishable by life imprisonment. However, the constant development of international law indicates a fundamental modernization of approaches to mutual relations. Mention in Art. 5 of the Framework Decision on the legal guarantee of life imprisonment by the judicial body that issued the arrest warrant is a clear confirmation of that.

In addition, a similar attitude can be found in one of the popular legal instruments of the Council of Europe - the Convention on the Prevention of Terrorism dated May 16, 2005. According to Part 3 of Art. 21 entitled "Discrimination Provisions" of the said document: nothing in this Convention shall be construed as requiring extradition where there is a risk that the person referred to in the extradition request will be punished in the form of: the death penalty, if the legislation of the requested Party does not provide for life imprisonment; or life imprisonment without the possibility of parole. Traditional exceptions to the presented rule include cases where, under extradition treaties, the requested Party is required to extradite the person if the requesting Party provides an assurance that the requested Party considers sufficient to ensure that: (a) the death penalty will not be appointed or, in case of its appointment, it will not be fulfilled; or (b) the person (offender) will not be sentenced to life imprisonment without the possibility of early release.

In the context of the topic proposed for consideration, we consider it expedient to focus attention on provisions that convey the normative content of the legal principle "ne/non bis in idem". Yes, according to Art. 54 of the Convention of June 19, 1990, "a person against whom legal proceedings have been finally completed in one Contracting Party may not be prosecuted by the competent authorities of another Contracting Party for the same actions, provided that the prescribed punishment has been served, is currently occurring or in the future cannot be executed in accordance with the legislation of the Contracting Party that issued the sentence." Similar instructions are set out in Part 2 of Art. 3 of the Framework Decision, which, among other things, requires the executing judicial authority to be notified (informed) that the requested person has been finally convicted by the Member State in respect of the same acts.

The provisions of Article 50 of the Charter of Fundamental Rights of the European Union also regulate the right not to be convicted or punished twice in proceedings for the same criminal offense. No person may be re-convicted or punished in criminal proceedings for an offense for which he or she has already been finally acquitted or convicted . It should be especially noted that the CJEU in the decision on the Spasic case, C-129/14 PPU dated May 27, 2014 stated that according to which "the application of the principle of "ne bis in idem" depends on the condition that after the conviction and sentencing, a punishment is imposed" has been completed" or "actually in progress". implementation", compatible with Article 50 of the Charter of Fundamental Rights of the EU, in which this principle is enshrined. Also, the decision of the CJEU stated that Article 54 of this Convention should be interpreted in such a way that the simple payment of a fine by a person sentenced by the same decision of a court of another Member State to imprisonment, which has not been served, is not sufficient to consider that the punishment "has been served" or "actually in progress" within the meaning of this provision".

In addition, the CJEU issued a number of decisions in cases regarding the interpretation of the principle of "ne bis in idem" in the implementation of Art. 54 of the Convention on the Implementation of the Schengen Agreement. Formulated conclusions are applicable to the Framework Decision, respectively. For example, following the results of the Mantello case, C-261/09

of November 16, 2010, clarification of such terminological constructions as "final decision" and "the same act" was provided.

In Case C-436/04, Van Esbroeck (judgment of 9 March 2006), the CJEU declared: "the principle of 'ne bis in idem' enshrined in Article 54 of the Convention implementing the Schengen Agreement must apply to criminal proceedings initiated in a Contracting State to a State for acts for which a person has already been convicted in another Contracting State, even if the Convention was not yet in force in the latter State at the time of conviction of such person, since the Convention was in force in the Contracting States concerned at the time of assessment by the court before which the second proceedings were brought, conditions of applicability of the principle "ne bis in idem". The opinion of the CJEU in the case C-150/05, Van Straaten (judgment of 28 September 2006. The doctrinal and applied significance of the above prescriptions of the Framework Decision is also unquestionably confirmed by the legal position of the CJEU in the case C-486/14, Kossowski (judgment of 29 June 2016), according to which it is also determined that the content of the principle "ne bis in idem".

CONCLUSIONS

In view of the above, we state that since January 1, 2004, the Framework Decision on the EAW in the relations between the member states of the European Union has replaced the relevant provisions of international legal acts in the field of extradition without prejudice to their use in relations with third countries. Simplified and accelerated procedures for the transfer of persons are subject to application only between states that are part of the specified integration association (the mentioned characteristics are clearly perceived as advantages of the latest mechanism in the system of law enforcement activities). At the same time, the competent judicial authorities of the requested countries must also bear in mind the current requirements of bilateral and multilateral treaties regarding the extradition of criminals.

Today, Ukraine has clearly expressed its desire for European integration and the acquisition of EU membership. A detailed understanding of the latest mechanisms for the implementation of international and European standards in the sector of ensuring the fundamental rights and freedoms of the individual by the competent judicial and law enforcement bodies of the states when applying the EAW will contribute to coordination in the development of a universal approach to solving problematic issues .

In particular, the study of the practice of applying the EAW procedure in the EU member states will make it possible to prepare the legal system of Ukraine for the next steps of in-depth cooperation with the EU in law enforcement activities and to develop recommendations for the protection of individual rights in Ukraine and the guarantee of fundamental rights and freedoms during criminal proceedings. Therefore, the application of the EAW in the legislation of Ukraine will be possible only in case of consolidation and amendments to the legislative acts (the Constitution of Ukraine and the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine), thereby ensuring proper regulatory regulation of this institute. Currently, there is an urgent need to implement and develop the directions of the modern concept of harmonization of the legislation of Ukraine in the researched area, because the introduction of only separate legal means of applying EAW into national legislation will lead to the problem of interpreting the existing mechanisms by the domestic practice of EAW law enforcement in the implementation of international and European standards in the sector of ensuring fundamental rights and individual freedoms.

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