Marek Kordik*: European Arrest Warrant and mutual cooperation in criminal matters between EU Member States: selected application problems

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Introduction

The paper deals with the issue of European Arrest Warrant ("EAW"), in particular with certain problematic issues that have occurred during its use in practice and why this legal tool "has faced" so many judicial decisions in front of national or european courts. The paper is not meant to cover all the hot and touchy issues related to the EAW. The reason is limited space, specific purpose of this paper and the effort to support or challenge each argument by concrete judicial decision. Notwithstanding that I do not want to conclude either that pointed issues presented further are the only ones or so underestimate the importance e.g. *ne bis in idem issue, a relation to the Schengen Information System, the application of the Art. 6 of the ECHR**[1]** and the surrender procedure or the way of filling the EAW.*

The Paper puts stress mainly on the procedural rather than substantive issues. The reason of this is the awareness that in most cases, were the procedural provisions those that had been challenged before the national and international courts and caused the disputes among the professionals dealing with this topic. Besides that, the paper shows particular procedural practice of national courts that may interfere with the human rights of the surrendered person.

The Rule of specialty- legal uniformity approach and ECJ decision in the Layman-Pustovarov case

The Rule of specialty means that requesting State can only prosecute the surrendered person for the crime for which extradition was granted.[2] In other words it serves to protect the right of the person surrendered not to be prosecuted or to have to serve with regard to fact committed prior to his surrender, other than those for which the surrender was granted. The real reason why the Rule of speciality has been created was a fear of requested State that requesting State would try requested person for other facts e.g. political crimes.[3] Although this principle is found almost in every extradition treaty, its national application and practice varies.

Without the Rule of speciality this would give the requesting State the possibility, once it had custody of the requested person, to solve and finish cases it would have had otherwise it would not have been able to do so. It was based on a sort of institutional mistrust between States.[4]

Concerning the Rule of Speciality the Framework Decision provides in Article 27. 2. that '*Except in the cases referred to in paragraphs 1**[5]** and 3**[6]**, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.*

The wording of the Article 27 with its Rule of speciality has its origin in the Articles 14 and 15 of the European Convention on Extradition[7] that has formed the main basis for extradition within Europe.[8]

The Framework Decision refers to the term "*offense*". There can be recognized two main approaches in relation to the examined criteria. The first one considered as distinguishing criteria the legal qualification[9] of the conduct and the second one the factual circumstances of the act[10].

This difference is decisive. If the Rule of speciality covers the same acts as mentioned in the decision on surrender, it protects against the prosecution of other material (historical) facts prior to the surrender. A different legal qualification of the facts on which the surrender is based, however, is then permitted as long as the new legal characterization of the facts could

be the basis for surrender under the EAW. If the Rule of speciality covers the same offense of the decision on surrender, it protects against prosecution under a different legal qualification of the factual basis.[11] *Stricto sensu* the Framework Decision refers to the legal qualification and therefore the person may not be prosecuted for different legal characterization of the same facts.[12]

Saying that, the main concern and criticism of the "legal qualification" approach is the risk, that the surrendered person can be prosecuted for different or added conduct that establishes the same crime for which the person has been surrendered.

The clarification of the term offence has been raised also in *the Layman**[13]** Pustovarov**[14]** case.* The ECJ ruled in this particular case that

> in order to establish whether **the offence** under consideration is **an 'offence other'** than that for which the person was surrendered within the meaning of Article 27(2) of the Framework Decision, requiring the implementation of the consent procedure referred to in Article 27(3)(g) and 27(4), it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing State, are those in respect of which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision.[15]

Concerning the reasoning of the ECJ it has to be mentioned that it has emphasized the application of the EAW less than precise legal wording and try to justify the link between the rule of speciality and its relation to the legal qualification. This is caused mainly by the experience that request to surrender person is submitted mainly during the pretrial phase, when all evidence has not been established yet. It is therefore extremely difficult for the judicial authority precisely qualifies and describes in details the conduct on the beginning of the whole criminal proceeding. The ECJ has ruled that

> To require the consent of the executing Member State for every modification of the description of the offence would go beyond what is implied by the specialty rule and interfere with the objective of speeding up and simplifying judicial cooperation of the kind referred to in the Framework Decision between the Member States.[16]

The Rulings and thoughts of the ECJ follow the line drawn by the preamble of the Framework Decision- to speed up and simplify the whole procedure[17]. The border line set up by the ECJ is the formulation of *"modifications of time and place do not/ shall not alter the nature of the offense*"[18] This criteria given by the ECJ seems to be sufficient to satisfy also the "higher standard" of rights protection of the surrendered person provided by the factual uniformity approach, because of its more narrow scope.

Unfortunately, the ECJ contradicts itself almost immediately, when it States that

> in circumstances such as those in the main proceedings, a modification of the description of the offence concerning the kind of narcotics concerned is not such, of itself, as to define an 'offence other' than that for which the person was surrendered within the meaning of Article 27(2) of the Framework Decision.[19]

As one can see, the ECJ does not consider replacement of kind of narcotics by one to another as altering the nature of the offense. This goes far beyond the Rule of speciality and such a wide interpretation cannot be justified either by the argument of implied purpose, drawn by the ECJ in previous paragraph. The judicial authority has to be aware from the early

beginning of the investigation what are the narcotics and identify them. This is important not only because of Rule of speciality but also because of whole legality and legitimacy of the criminal proceeding. If the judicial authority is not aware of exact kind of narcotics, how it can be aware that the particular drug crime has been committed?

There could be one reason that justifies such a broad conception of the Rule of speciality. It is common and corner stone idea that the system of extradition should be replaced by a system of free movement of judicial decisions in criminal matters[20], that shall be executed by each Member State on the basis of the principle of mutual recognition[21].

In classical extradition law the same apply to this rule as set out in this Article[22]. The Article makes it possible, however, for the Member States to opt for reversed rules in that the rule of speciality in general is waived between States who take the same position on this subject, except when in particular case the judicial authority decides to the contrary. This seems a logical consequence of the high level of confidence mentioned in the preamble.[23]

If we adopt this idea, partially accepted by the ECJ, we can consider the territory of the EU as one jurisdiction. From this point of view, the Rule of speciality is an anachronism and seems to be redundant in mutual cooperation in criminal matters between the EU Member States.

The Rule of speciality under Article 27.2 of the Framework Decision prohibits that a person is prosecuted, sentenced or otherwise deprived of his or her liberty for another offence than that for which surrender was granted. Questionable is whether an extension of the period of probation for another offence falls within the paragraph 2.

> In a recent judgment the Oberster Gerichtshof of Austria considered that issue and held that the principle of speciality does not apply to an extension of a period of probation for an offence which is not covered by the EAW. The Court's main argument was that the prolongation of the period of probation is neither a continuance of the (initial) trial nor is it an enforcement of a penalty involving the deprivation of liberty. By extending the period of probation the person concerned is not prosecuted, sentenced or otherwise deprived of his or her liberty. The Court further distinguished an extension of the period of probation from a revocation of parole. The latter provokes the enforcement of a penalty (and leads to a deprivation of personal liberty|, whereas the extension of the period of probation does not result in a restriction of personal liberty.[24]

There is another issue concerning the Rule of speciality that has not been challenge yet. Even if the person sought supplies evidence of a potential disregard of the Rule of speciality by the issuing (prosecuting) Member State, the executing judicial authority may not refuse to execute the EAW. Under the Framework Decision a possible infringement of the right to speciality is not a ground for the non-execution of the EAW, neither mandatory nor optional.[25] If the issuing Member State disregards the entitlement to speciality and if no exception under the Article 27.3 of the Framework Decision applies, the surrendered person may only challenge the judgment under the national law of the issuing State.[26]

Having said this, under the national law of the executing Member State a potential breach of the Rule of speciality by the issuing Member State cannot be successfully alleged. Before the judicial authority of the executing Member State the person sought may only ask for certain guarantees to be given by the issuing Member State under Article 5 of the Framework Decision.[27]

Conclusions

If one read articles, books and observations concerning the EAW, words like revolutionary and new occur. The EAW has lived up to expectations. It has made surrender procedure faster, more effective and less political, and has given new rights, such as the deduction of time spent on remand from the final sentence served. The idea of the EAW has proved its

reasonability and vitality and appears as good tool in the fight against crime. Apart from that the path founded by the EAW is only possible to protect the 4 basic EU freedoms- free movements of persons, goods, services and capital - as basic prerequisites of sustainable development of the EU. But in the same time it shall not breach other human rights and freedoms. From this perspective there may still be room for improvement and adjustment[28] as the paper will show.

The practice has shown many gaps and ambiguity in the wording of the Framework Decision mostly in the procedural standards among the Member States. The primary goal to reach nowadays is to meet the same procedural standards among the Member States.[29]

As it has been displayed in this paper, it seems that the idea of mutual recognition prevails over the basic respect of human rights of the surrendered person.[30] The birth of the Framework decision is representative of Europe endeavors to synthesize its jurisdictions. The EU tries to do this under the banner of mutual recognition of criminal judgments, a banner for the first time held up in Tampere. This banner is a political Statement, and as such a source of enthusiasm. In some respects, the mutual recognition of criminal judgments is also a reality, in the context of *ne bis in idem*. As regards, extradition, however, the banner is far ahead of the troops. The idea of the mutual recognition of criminal judgments in the field cannot be realized as long as the European Union consists of separate Member States, each of which is responsible for the protection of the rights of everyone under its jurisdiction[31]. Not until the 27 jurisdictions have merged into one, will the unrestricted mutual recognition of criminal judgments be feasible.[32]

Moreover and more importantly, it is still not clear what the underlying principle of the EAW scheme: mutual recognition, means. It is puzzling that, having referred to it as the corner stone of criminal co-operation within the EU, so far the EU legislature has refrained from clarifying what mutual recognition actually means in the context of cooperation in criminal matters. In other words, the case for the EAW as radical new form of co-operation may have been made it has not been substantiated.[33]

Also the tension between ideas and reality appears from the Framework decision itself. On the one, its wording reflects the idea of mutual recognition not only in paragraph 6[34] of its Preamble but also in Article 1.2[35] and in Article 3[36]. On the other hand several Articles[37] restrict the Member States obligation to surrender and reflect requested Member States own responsibilities as prevailing over the wishes of requesting other Member States.[38] This is problematic because the presumptions underlying mutual recognition- mutual trust and a single European criminal jurisdiction built on shared values- do not reflect the reality of criminal law co-operation in the EU.[39] EAW has to take long journey to do so. Otherwise it risks that the whole idea will break down.

The fact that the lists of offences are described as categories of crimes rather than crimes leaves room for concern. While dual criminality is generally thought to be rooted in State sovereignty and the principle of reciprocity, one would like to draw attention to the individual's interest in dual criminality verification. The latter interest requires respect for the legality principle and the individual's right to know what types of conduct are considered criminal and extraditable. With vague categories of crimes it cannot be said that conduct is forseeable. It is not clear what certain categories means e.g. racketing or computer- related crimes. The abolition of dual criminality is thus problematic with regard to list offences whose content is unclear and controversial. For the latter group it cannot be said that dual criminality may be presumed. Until the laws of the EU Member States are fully harmonized the abolition of dual criminality verification with regard to those offences may result in violation of human rights.[40] One solution may be purposed. The Member States should make known which criminal offences under their law fall into each category mentioned in Article 2.[41]

In relation to the surrender of nationals, several problems have been identified with the implementation of the Article 4 and Article 5. The main problem is the discrepancy between the Framework Decision and the domestic legislation and the uncertainties regarding the application of prevailing conventions to the take-over of criminal sentences and the transfer of sentenced persons.[42]The Framework decision could be adapted so that Article 4 and Article 5 of the Framework decision contain clearer rules on the conditions that can be set on surrender for prosecution purposes can be refused and the conditions that can be set on surrender for prosecution purposes in relation to the requested person reintegration.[43] The optional ground for refusal would open the possibility to make refusal dependent on the answer to the question in which Member State the requested person could best reintegrate.[44]

The optional exceptions should be implemented as optional, not mandatory grounds for refusal and be linked to the principle of reintegration. Clarification is needed of the rules on the conditions under which surrender for execution purposes can be refused and the conditions that can be made for surrender for prosecution in relation to the requested person reintegration, with a view to the wording of the Framework Decision. *Locus delicti* exceptions should be implemented as optional.[45]

The Framework Decision is underpinned by the ECHR and by the other treaty based safeguards. Under the Framework Decision there is an obligation upon the judicial authorities of all Member States to respect fundamental rights and to observe the principles recognized by Article 6 of the EU Treaty as reflected in the Charter of Fundamental Rights of the European Union, in particular the rights enshrined in Chapter VI. Nothing in the Framework decision prohibits refusal to surrender a person on the ground that there are reasons to believe, on the basis of objective elements, that an EAW has been issued for the purpose of prosecuting or punishing the person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that the persons position may be prejudiced for any those reasons. A judicial authority must not execute an EAW where there is a serious risk that the person whose surrender is sought would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.[46]. The Framework decision does not have the effect of modifying or diminishing the obligation of all Member States to respect fundamental rights and fundamental legal principles as enshrined in the Article 6 of the EU Treaty.[47] The EU extensive programs for judicial training and exchanges should lead to even better knowledge of each other criminal justice systems and thus greater trust.[48] Even the Framework Decision provides certain safeguards[49] they are not sufficient to maintain human rights and the risk of mistake or abuse is such a high. It must also be taken into account, however, that by entering into a system of closer cooperation in criminal matters, as the Member States have done by adopting the Framework decision, they not only share the benefit of more efficient criminal enforcement, but they also more closely share the burden of maintaining the rule of law and protecting the human rights of citizens throughout the EU. If human rights are in danger, no Member State can wash its hands over it.[50]

It is important for the EU, in this phase of transition, to have knowledge of other regional extradition systems, from which one can learn. The Nordic extradition system, dating from 1961, which is outlined by Strandbakken, has been inspiration for the creation of the EAW system in 2002. In the meantime, in 2005, the Nordic States have taken a further step forward, mainly by totally abandoning the dual incrimination requirement and completely parting with the nationality exception. A comparison with the extradition system among the individual States of the United States, as outlined by Abramson, may make us feel ahead and behind at the same time. The EAW system seems to be ahead for being less cumberstone than the US system. It is behind, however, where it has many refusal grounds for which the US system

does not provide. This may explained by the individual States of the USA being more similar to the provinces of one unified State than the EU Member States, each of which is still a separate sovereign State, with the responsibilities inherent in that status for the protection of the rights of persons in their jurisdictions. The unification of the EU has yet to break through.[51]

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[1]Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 with Protocol Nos. 1, 4, 6, 7, 12 and 13 (further mentioned as ECHR). http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf.
[2] BASSIOUNI. M.CHERIF, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW, Transnational publishers, New York, 2003, p. 349.
[3] BLAKXTOON, R.,VAN BALLEGOOIJ, W., HANDBOOK ON EUROPEAN ARREST WARRANT, T.M.C. Asser Press, 2005, p. 261.
[4] Ibid.
[5] Article 27.1 of the Framework decision provides that: Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority States otherwise in its decision on surrender.
[6] Article 27.3 provides that: Paragraph 2 does not apply in the following cases: (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it; (b) the offence is not punishable by a custodial sentence or detention order; (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty; (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty; (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13; (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the

consequences. To that end, the person shall have the right to legal counsel; (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

[7] European Convention on Extradition signed on 13.12. 1957 in Paris. http://conventions.coe.int/Treaty/EN/Treaties/Html/024.htm.

[8] LAGONDY, O. ROSBAUD, CH., SPECIALITY RULE, IN:KEIJZER N., VAN SLIEDREGT, E., THE EUROPEAN ARREST WARRANT IN PRACTICE, T.M.C. Asser Press, 2009, p. 271.

[9] If a person is surrendered for the crime of murder, he or she can be prosecuted in the requesting State only for the crime of murder, considering this the factual circumstances are irrelevant.

[10] If a person is surrendered for the crime of murder committed by killing the person X, he or she can be prosecuted only for the killing of person X, considering this the legal qualification is irrelevant.

[11] LAGONDY, O. ROSBAUD, CH., SPECIALITY RULE, IN:KEIJZER N., VAN SLIEDREGT, E., THE EUROPEAN ARREST WARRANT IN PRACTICE, T.M.C. Asser Press, 2009, p. 288.

[12] Ibid 289.

[13] The criminal proceedings against Mr Leymann: By a European arrest warrant of 21 March 2006, the Helsinki District Public Prosecutor requested the Polish judicial authority to arrest and surrender Mr Leymann for the purposes of his prosecution for a serious narcotics offence he was suspected of having committed between 1 January 2005 and 21 March 2006. According to the arrest warrant, Mr Leymann unlawfully imported into Finland, with the aid of accomplices, a large quantity of amphetamines, a substance classified as an especially dangerous narcotic substance, with the intention of reselling it. On 28 June 2006, the Polish judicial authority decided to surrender Mr Leymann to the Republic of Finland on the basis of the request set out in the arrest warrant. On 2 October 2006, the Helsinki District Public Prosecutor instituted criminal proceedings against Mr Leymann before the Helsingin käräjäoikeus for a serious narcotics offence committed between 15 and 26 February 2006. The indictment Stated that Mr Leymann had, together with Mr Pustovarov and others, imported into Finland 26 kg of hashish with the intention of reselling it. Mr Pustovarov and another person were said to have organised the import, with the assistance of Mr Leymann. Mr Leymann imported the hashish into Finland via the port of Hanko, in a private car, and handed it over in Kouvola (Finland) by leaving it for another person to collect. The Helsinki District Public Prosecutor Stated that, before the start of the hearing of the case by the Helsingin käräjäoikeus, information had been received from a representative of the Republic of Poland at Eurojust, the European body responsible for reinforcing judicial cooperation, that it was not necessary to request the consent of that Member State under Article 27(3)(g) and (4) of the Framework Decision for prosecution of Mr Leymann for the serious narcotics offence consisting of the import of hashish, even though the surrender had taken place on the basis of the suspected import of amphetamines. On 7 November 2006, the Helsingin käräjäoikeus, before which no objection had been raised to the surrender or indictment of the accused persons, convicted the alleged offenders, including Mr Leymann, who was sentenced to a term of imprisonment. Mr Leymann appealed against that conviction to the Helsingin hovioikeus (Court of Appeal, Helsinki), claiming that he should not have been prosecuted for the serious narcotics (hashish) offence committed between 15 and 26 February 2006 because he had not been surrendered to the Finnish judicial authority for that offence. By decision of 16 August 2007, that court took the view that the Helsingin käräjäoikeus had obtained the consent of the Polish judicial authority, expressed through its representative at Eurojust, to prosecute Mr Leymann for that offence. On 30 November 2007, the Helsingin hovioikeus gave judgment on the substance of the case and sentenced Mr Leymann to three years and four months in prison. Although, according to the order for reference, Mr Leymann has been

deprived of his liberty since his arrest in the surrender proceedings, his representative Stated at the hearing before the Court that he has been on parole since February 2008.
[14]Criminal proceedings against Mr Pustovarov By a European arrest warrant of 8 May 2006, the Helsinki District Public Prosecutor requested the Spanish judicial authority to arrest and surrender Mr Pustovarov for the purposes of his prosecution for a serious narcotics offence he was suspected of having committed between 19 and 25 February 2006. According to the arrest warrant, Mr Pustovarov unlawfully imported into Finland, with the assistance of accomplices, a large quantity of amphetamines classified as especially dangerous narcotic drugs, with the intention of reselling them. Mr Pustovarov was described as having organised the importation of the drugs and their resale. The arrest warrant also related to two other serious narcotics offences consisting of the importation and resale of large quantities of hashish, one committed in September and October 2005, the other in November of that year. On 20 June 2006, the Spanish judicial authority decided to surrender Mr Pustovarov to the Republic of Finland on the basis of the request set out in the European arrest warrant of 8 May 2006. On 2 October 2006, the Helsinki District Public Prosecutor instituted criminal proceedings against Mr Pustovarov before the Helsingin käräjäoikeus on the basis set out with respect to him in paragraph 21 of this judgment. On 24 October 2006, while the hearing of the case by the court was in progress, the Public Prosecutor issued another European arrest warrant, requesting the Spanish judicial authority to consent to the prosecution of Mr Pustovarov for a serious narcotics offence committed between 19 and 25 February 2006, consisting of the importation for resale of a large quantity of hashish, not of amphetamines as had been Stated in the original arrest warrant. By a judgment of 7 November 2006, which was delivered before the consent of the Spanish judicial authority requested under the second arrest warrant had been obtained, the Helsingin käräjäoikeus sentenced Mr Pustovarov to a term of imprisonment for the serious narcotics offence committed between 15 and 26 February 2006, as set out in the indictment, and two other serious narcotics offences of which he was accused. Mr Pustovarov appealed against that conviction to the Helsingin hovioikeus, claiming that he should not have been prosecuted for the serious narcotics (hashish) offence committed between 15 and 26 February 2006 because he had not been surrendered to the Finnish judicial authority for that offence. On 11 July 2007, the Spanish judicial authority gave its consent to the prosecution of Mr Pustovarov on the grounds set out in the second arrest warrant. The Helsingin hovioikeus considered that, even though the consent of the Spanish judicial authority had been obtained only after the judgment of the Helsingin käräjäoikeus, that court had not been precluded from hearing the case against Mr Pustovarov concerning the serious narcotics offence committed between 15 and 26 February 2006. On 30 November 2007, the Helsingin hovioikeus convicted Mr Pustovarov of that offence and of the two other offences of which he was accused, and sentenced him to imprisonment for a total of five years and eight months.
[15] The decision of the Court of Justice in case C- 388/2008, para. 59 http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&numaff=&nomusuel=pustovarov&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docor=docor&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoor=docnoor&radtypeord=on&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typeord=ALL&domaine=&mots=&resmax=100&Submit=Rechercher
[16] Ibid: para. 55-56.
[17] See the para 1. of the Framework decision preamble.
[18] The decision of the Court of Justice in case C- 388/2008, para. 59 http://curia.europa.eu/jurisp/cgi-

bin/form.pl?lang=en&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&numaff=&nomusuel=pustovarov&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docor=docor&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoor=docnoor&radtypeord=on&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typeord=ALL&domaine=&mots=&resmax=100&Submit=Rechercher

[19] Ibid. Para 63.

[20] Para 5 of the Preamble of the Framework decision.

[21] Art.1.2 of the Framework decision.

[22] Note: Article 27 of the Frame work decision.

[23] BLAKXTOON, R.,VAN BALLEGOOIJ, W., HANDBOOK ON EUROPEAN ARREST WARRANT, T.M.C. Asser Press, 2005, p. 262

[24] LAGONDY, O. ROSBAUD, CH., SPECIALITY RULE, IN:KEIJZER N., VAN SLIEDREGT, E., THE EUROPEAN ARREST WARRANT IN PRACTICE, T.M.C. Asser Press, 2009, p. 275.

[25] Compare the Art. 3 and Art. 4 of the Framework decision.

[26] LAGONDY, O. ROSBAUD, CH., SPECIALITY RULE, IN:KEIJZER N., VAN SLIEDREGT, E., THE EUROPEAN ARREST WARRANT IN PRACTICE, T.M.C. Asser Press, 2009, p. 276-277.

[27] Ibid p. 277

[28] BLAKXTOON, R.,VAN BALLEGOOIJ, W., HANDBOOK ON EUROPEAN ARREST WARRANT, T.M.C. Asser Press, 2005, p. 2

[29]Ibid p. 3

[30] Ibid.

[31] Article 1 of the ECHR.

[32] KEIJZER N., VAN SLIEDREGT, E., THE EUROPEAN ARREST WARRANT IN PRACTICE, T.M.C. Asser Press, 2009, p. 397

[33] Ibid p. 67.

[34]The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the cornerstone of judicial cooperation.

[35]Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

[36]The judicial authority of the Member State of execution (hereinafter .executing judicial authority.) shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State.

[37] Articles 3, 4 and 5) of the Framework Decision.

[38] KEIJZER N., VAN SLIEDREGT, E., THE EUROPEAN ARREST WARRANT IN PRACTICE, T.M.C. Asser Press, 2009, p. 397.

[39] Ibid p. 67.

[40]Ibid p. 68.

[41] Ibid p. 398.

[42]BLAKXTOON, R.,VAN BALLEGOOIJ, W., HANDBOOK ON EUROPEAN ARREST WARRANT, T.M.C. Asser Press, 2005, p. 83.

[43] Ibid p.86.

[44] Ibid p.83.

[45] KEIJZER N., VAN SLIEDREGT, E., THE EUROPEAN ARREST WARRANT IN PRACTICE, T.M.C. Asser Press, 2009, p. 398.
[46] Para 12 of the Preamble of the Framework decision.
[47] Article 1.3 of the Framework decision.
[48] KEIJZER N., VAN SLIEDREGT, E., THE EUROPEAN ARREST WARRANT IN PRACTICE, T.M.C. Asser Press, 2009, p. 292.
[49]Ibid p. 208.
[50]Ibid p. 194.
[51] Ibid p. 400.