

IMPLEMENTATION OF THE EUROPEAN ARREST WARRANT

Abstract

The paper analyses the European Arrest Warrant which is based on the principle of mutual recognition and the principle of effective cooperation, which represent the foundations of judicial cooperation in criminal legal matters. The authors analyse whether there are obstacles to mutual recognition of decisions and how effective cooperation is when it comes to the European Arrest Warrant. The paper includes the conducted research regarding appeals against the European Arrest Warrant addressed to the Supreme Court and the High Criminal Court of the Republic of Croatia. The aim is to use a random sample to determine which criminal offenses are most often the subject of the European Arrest Warrant, as well as the number of rejections or acceptance of appeals against the European Arrest Warrant. In particular, by using the case study method, cases were analysed in which the appeal was accepted, i.e., to determine the shortcomings of the first instance courts in making decisions. According to the available data, an analysis was performed on the number of issued and executed warrants for individual countries from 2014 to 2018, which shows the functionality of the implementation.

Keywords: *European Arrest Warrant, appeal, principle of effective cooperation.*

1. Introductory Considerations

International cooperation in criminal matters in the EU is based primarily on the Treaty on European Union and the Treaty on the Functioning of the European Union. Judicial cooperation in criminal matters in the European Union is based on the principle of mutual recognition of judgments and court decisions, which is the basis for the surrender of the requested person under the European Arrest Warrant (hereinafter: EAW) and the Council Framework Decision of 13 June 2002 on European Arrest Warrant and surrender procedures between Member States (2002/584/JHA, hereinafter: Framework Decision). The Frame-

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work Decision has a far-reaching significance and does not focus only on the introduction of hitherto unknown forms of criminal legal cooperation of European states, but is the first concrete measure implementing the principle of mutual recognition of court decisions in criminal law and thus establishing a European “area of freedom, security and justice” (Đurđević, 2007, p. 1022). The significance of the Framework Decision is also reflected in the judgment of the Court of Justice of the EU of 29 January 2013 in the case of Ciprian Vasile Radu (Case 396/11, ECLI:EU:T: 2013) in which the Court found that the purpose of that decision was to replace the multilateral system of extradition between Member States with a system of surrender as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or conducting prosecutions, so that the system of surrender is based on the principle of mutual recognition (Judgments of the Court of Justice of the European Union, Ciprian Vasile Radu, 2013 and Lopes Da Silva Jorge ECLI: EU:T:2012; Decision of the Constitutional Court of the Republic of Croatia, U-III-351/2014).

In accordance with the above, the research will be conducted in the paper with the realization of the following goals:

1. to consider the applicability of EAW through normative analysis;
2. to investigate the case law of the Supreme Court and the High Criminal Court on certain issues that appear in appeal proceedings by using case studies;
3. to perform an analysis of issued and executed EAWs in the countries that had the highest number of issued orders.

2. Development of the European Arrest Warrant

Burić (2007, p. 220) states that the terrorist attack on 11 September 2001 had a decisive influence on the dynamics of preliminaries for the Framework Decision. Turudić (2014, p. 328) also believes that the need to introduce a new instrument of judicial cooperation is a consequence of growing interstate organized crime and the European Union’s response in preventing the commission of terrorism and serious crime through the EAW. Thus, Klimek (2015, p. 2) points out that the EAW does not refer to petty crime, but that it is a core development for the fight against cross-border crime throughout the European Union. The same author believes that EU member states were aware of the undesirable side effects of free movement of persons within Europe, which also meant free movement for criminals and this produced the growth of certain forms of transnational crime

from one EU member state to another. Namely, the principle of effective cooperation is important in proceedings in order to achieve the purpose of judicial cooperation as much as possible, and this is one of the main objectives of the Framework Decision. Emulating the Framework Decision, in 2010 Croatia adopted the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union. Čule and Hržina state that this law harmonizes domestic legislation with the *acquis communautaire* in the part that regulates judicial cooperation in criminal matters, *i.e.*, in the part where the principle of mutual recognition is applied to decisions of foreign judicial bodies made during criminal proceedings, as well as after its termination (Čule & Hržina, 2013, p. 716). For this principle, some authors point out that it is a specificity of the European Union and represents one of the significant originalities of the area of Europe (Pradel, Corstens & Vermeulen, 2009, p. 607). The principle of mutual recognition within the European Union was initially accepted in the judgment of the Court of Justice of the European Union in *Rewe / Bundesmonopolverwaltung für Branntwein*, of 20 February 1979 (Case 120/78, ECLI:EU:T: 1979), and then its application was extended in the field of judicial cooperation in criminal matters. This principle has been gradually developed from the meeting of the European Council in Cardiff on 15 and 16 June 1998, through the program of measures to implement the principle of mutual recognition adopted in December 2000, to the Hague Program developed by the European Council in Brussels on 4 and 5 November 2004 (Čule & Hržina, 2013, p. 717; Pradel, Corstens & Vermeulen, 2009, p. 608).

3. Scope of the European Arrest Warrant

The key provision according to which the EAW applies is Article 2 (1) of the Framework Decision, which according to the authors of this paper is rather clumsily written, and reads: “EAW for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.” The authors consider that in the content of this norm the word “maximum” is not only unnecessary but also confusing and as such should be deleted.

Article 2 (2) of the Framework Decision also prescribes other criminal offenses for which an EAW is issued, so for 32 criminal offenses, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, the EAW may be issued, under the terms of this

Framework Decision and without verification of the double criminality and these criminal offenses represent a reason to surrender a person pursuant to the EAW. It is necessary to point out that the EAW no longer uses the term extradition but surrender of a person which is based on the principle of mutual recognition of judgments and court decisions. The surrender of a person, not extradition, is also mentioned in the Statute of the International Criminal Tribunal for the Former Yugoslavia (Law on the Application of the Statute of the International Criminal Court and Prosecution for Crimes against International War and Humanitarian Law, 2003, hereinafter: ICTY) and the International Criminal Tribunal for Rwanda (United Nations Security Council Resolution 955, hereinafter: ICTR) and in the Rome Statute of the International Criminal Court (Act ratifying the Rome Statute of the International Criminal Court, 2001; hereinafter: ICC) (Plachta, 2003, pp. 178-194). The ICTY Statute states that states must cooperate in the investigation and prosecution of persons accused of serious violations of international humanitarian law, and states must comply without undue delay with any request (Art. 29, para. 2, item (e) of the Statute of ICTY). The surrender of persons has become a generally accepted standard (Čvorović & Filipović, 2021, p. 158) regardless of the persons in question.

Except for 32 criminal offenses covered by Article 2 (2) of the Framework Decision, the requested person may be surrendered provided that the offenses for which the EAW was issued constitute an offense under the law of the executing Member State, regardless of the constituent elements or description of the offense (Art. 2 (4) of the Framework Decision). Turudić (2014, p. 328) states that the fact that the EAW, in accordance with the Framework Decision, allows the surrender of its own nationals is still a “stumbling block” for most Member States, as well as the introduction of a “catalogue” of 32 categories of offenses that do not require double criminality check, which is why most Member States consider that the rights of the requested person are endangered due to the vagueness and broadly described categories of offenses.

4. Contents of the European Arrest Warrant, Principles and Major Procedural Obstacles

According to the provision of Art. 18 of the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union (Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union, 2010, hereinafter: LJCCM-EU) EAW must contain the following data in a standard form:

1. identity and nationality of the requested person;
2. name, address, telephone and fax numbers, e-mail address of the authority that issued the warrant;
3. proof of the existence of an enforceable judgment, arrest warrant or other enforceable court decision having the same effect;
4. legal designation and legal description of the act;
5. factual description of the offense including the circumstances under which the offense was committed, time and place of commission, degree of participation of the requested person in the commission of the offense;
6. the type and duration of the criminal sanction imposed by the final judgment, *i.e.*, the type and duration of the criminal sanction for a specific offense prescribed by domestic law;
7. if possible, the consequences of the act.

From the provision of Art. 18 (3) of the LJCCM-EU it follows that the EAW must, *inter alia*, contain information on the arrest warrant, which was, *inter alia*, the subject of the decision of the Supreme Court of the Republic of Croatia (hereinafter: SCRC) and after inspecting the case file *Kir-eun* No. Kž-eun 12/2020-4 of 21 May 2020 (SCRC Decision, 2020), *i.e.* the content of the EAW, it is clear that the surrender of the requested person is requested on the basis of a national decision, an arrest warrant for pre-trial detention of 2 July 2018, in case No. 152 Gs 783/18 of 2 July 2018, issued by the Municipal Court in Düsseldorf (Decision of the Municipal Court in Düsseldorf, 2018), and for conducting criminal proceedings in the issuing State. The court of first instance rightly points out that the EAW is, in itself, the basis for the conduct of domestic competent judicial authorities with the competent judicial authorities of other Member States of the European Union. In doing so, the court of first instance clearly had in mind the principle of mutual recognition between EU Member States (Art. 3 of the LJCCM-EU), as the basis of judicial cooperation in criminal matters within the EU, as well as the principle of effective cooperation (Art. 4 of the LJCCM-EU), according to which in proceedings according to LJCCM-EU, within their competence and in accordance with the basic principles of the legal order of the Republic of Croatia, they are obliged to act in such a way as to achieve the purpose of judicial cooperation (SCRC, No. Kž-eun 12/2020- 4 of 21 May 2020).

In some appellate cases, there is the question of evidence in the context of Art. 18, pts 4 and 5 of the LJCCM-EU, however, the appellate courts stated that this was not the subject of an examination in the EAW enforcement proceedings. Thus, the requested person in the appeal argues with the conducted evidentiary procedure, claiming that at the hearing at which the conviction was passed, evi-

dentiary standards were applied that are below the acceptable minimum, as well as that the defence counsel *ex officio* had a number of omissions in the procedure which, however, is not subject to examination in the enforcement proceedings (SCRC, No. Kž-eun 29/2020-4 of 6 November 2020).

In addition to the above content of the EAW, Academician Krapac (2005, p. 631) emphasizes the principles of international criminal assistance as postulates of its regulation that guarantee optimal provision in interstate relations on the one hand, and protection of individual interests on the other, namely:

1. the principle of priority of international legal regulation of interstate legal assistance in criminal matters;
2. the principle of providing international criminal assistance “in the broadest sense”;
3. principles on the provision or refusal of international criminal assistance.

In the case of international criminal legal assistance, Krapac (2005, p. 635) states the following assumptions and obstacles that appear during extradition:

1. substantive preconditions for the provision of international criminal legal assistance are circumstances to the existence of which international or domestic law complements the obligation to provide legal assistance (the principle of reciprocity, the principle of mutual criminality (identity of the norm), the principle of specialty);
2. legal obstacles of substantive law for the provision of international criminal legal assistance relate to the nature of the offense in question (the nature of the offense in question);
3. legal obstacles of procedural law for the provision of international criminal legal assistance have also developed in extradition law (procedural impediments such as statute of limitations, the existence of *res judicata* of a violation of the guarantee of the rights of the defence in the requesting state, etc.);
4. obstacles of public law for the provision of criminal legal assistance are usually linked to the person committing the offense which is the subject of the request and the “public order” clause of the requested State.

The Framework Decision uses the same institutes from the doctrine mentioned by Krapac, and the principle of double criminality is to be emphasized. Some authors point out that the same was originally related to the principle of reciprocity in extradition because it ensured reciprocity in the actions of states and guaranteed that none of them would have to extradite persons for acts that they do not consider criminal offenses, while today it serves to protect citizens’ rights

since it prevents a person in the requested State from having his or her freedoms and fundamental rights restricted due to a request for extradition in respect of an offense which is not a criminal offense in that State (Pajčić, 2017, p. 561). Namely, the principle of mutual trust is a structural principle of EU constitutional law, although it is not stated in the founding treaties of the EU, and is related to the area of freedom, security and justice and enters into general legal principles of institutional character. It emphasizes the importance of mutual trust in the legal system and judicial institutions of another Member State (Turudić, Borzić Pavelin & Bujas, 2015, p. 1080).

With regard to double criminality, it is excluded if the issuing state prescribes imprisonment or a measure that includes deprivation of liberty for a maximum period of three years or more, and in the case of admission of a fine, regardless of the prescribed sentence. In its recent decision, the Supreme Court stated that in order to assess whether the condition of double criminality prescribed by the provision of Art. 20, para. 2, item 4 of the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union, legal qualification of the offense under the law of the issuing state is not decisive, but what is decisive is a factual description of the offense which for that very reason must be included in EAW (Art. 18, item 5 of LJCCM-EU). The double criminality check is performed by bringing the described factual situation under the substance of the relevant criminal offense from the valid Criminal Code (CC, 2011), whereby it is not relevant if the criminal offense has the same name as the criminal offense of the issuing state, nor whether it is an identical criminal offense, but the above condition of double criminality is met if the factual description of the criminal offense from EAW contains the characteristics of a criminal offense prescribed by domestic law (SCRC No. Kž-eun 24/2020-4 of 18 September 2020.) This position was reiterated in the following decision of the Supreme Court of the Republic of Croatia stating that from the provision of Art. 20, para. 2, item 4 of the LJCCM-EU it is not decisive whether the act was prescribed in domestic law at the time of its alleged commission, but it is important whether these acts can be classified as a criminal offense prescribed by domestic law at the time of the decision to surrender (SCRC, No. Kž-eun 25/2020-4 of 2 October 2020).

In addition to double criminality, the statute of limitations appears as a legal procedural obstacle and is explicitly mentioned in the Framework Decision only once, probably because it was an institute that should be crystal clear, but it is not according to case law, and is often problematic. The statute of limitations is one of the reasons for the possible non-execution of the EAW. Thus, according to Art. 4, para. 1, item 4 of the Framework Decisions the executing judicial authority may refuse to execute the EAW where the criminal prosecution or punishment of the

requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law. The proposal is certainly the harmonization of LJCCM-EU with the Framework Decision, because Art. 20, para. 2, item 7 of the LJCCM-EU states the reasons for refusing to execute EAW, and one of them refers to the statute of limitations and reads that the court will refuse to recognize the European Arrest Warrant if, according to domestic law, the statute of limitations for criminal prosecution or execution of a criminal sanction has expired, and there is a jurisdiction of the Republic of Croatia on the basis of domestic law. Musulin (2015, p. 93) points out in his research that in European legal theory there is a division of supporters of theories of double criminality. Some supporters of the theory *in concreto* are Austria, Germany and Russia, while, in contrast, Belgium, Denmark, Italy and Sweden have accepted the theory *in abstracto*. The same author states that the requirement to meet the conditions of the *in concreto* theory in potential 28 legal systems of the Member States is definitely not considered a big step forward compared to the “classical” extradition system, and that the obvious lack of completely equal institutions, conditions for criminality in all Member States leads to the inequality of assumptions which definitely does not lead to economy, efficiency and, more importantly, to the abolition of the formalities of the procedure, while the theory *in abstracto*, due to the limitation of verification to the very definition of a criminal offense, is considered a variant that can better correspond to the set of goals and purpose of surrender, *i.e.* to the institute of the European Arrest Warrant in general (Musulin, 2015, p. 93).

5. Special Conditions for the Execution of a European Arrest Warrant

When it comes to special conditions for the execution of an arrest warrant, according to the provisions of Art. 22, para. 1 of the LJCCM-EU, if the subject of EAW is an act for which a sentence of life imprisonment or a measure of life deprivation of liberty can be imposed, the court may condition its execution:

1. on the existence of a legally prescribed possibility of reviewing the imposed sentence or measure at the request of the convict or *ex officio* no later than 20 years from the imposition of the sanction, in the issuing state
2. on the right of the convicted person to seek pardon from further execution of the sentence or measure on the basis of law or case law in the issuing state.

In case that the EAW is issued for the purpose of conducting criminal proceedings, and the requested person is a citizen of the Republic of Croatia or a

person residing or staying in its territory, the court will make the surrender of that person conditional on his return to the Republic of Croatia, if a sanction is imposed on him in the issuing state, and that person has agreed to serve the imposed sanction in the Republic of Croatia (Art. 22, para. 2 of the LJCCM-EU). In case of violation of the latter provision, there is a violation of Art. 494 para. 4 of the Criminal Procedure Code of the Republic of Croatia (CPC, 2008) as established by the High Criminal Court in its decision and stated that the law was violated to the detriment of the requested person. Namely, the provision of Art. 22, para. 3 of the LJCCM-EU stipulates that if the EAW is issued for the purpose of conducting criminal proceedings, and the requested person is a citizen of the Republic of Croatia or a person who has a residence or stay in its territory, the surrender of that person will be conditioned by his return to the Republic of Croatia, if a sanction is imposed on him in the issuing state, and that person has agreed to serve the imposed sanction in the Republic of Croatia (High Criminal Court, No. I Kž-eun-9/2021-4 of 16 April 2021). In the following case, the requested person in the appeal completely incorrectly claims that the EAW issued by the Republic of Slovenia was not accompanied by documentation and translation of EAW into Croatian and in the rest of the appeal does not present any acceptable argument why he considers that the first-instance decision is illegal but rather in an extensive manner presents his objections related to the conditions of staying in prison, to the procedure during his surrender to the Republic of Slovenia in the previous proceedings before the Slavonski Brod County. Given that the appellant did not at all call into question the correctness of the determination of the court of first instance, because the court of first instance correctly determined that in the specific case all the legal conditions from Art. 41, paras. 1 and 2 of the LJCCM-EU were met, without any reasons for refusing the EAW, *i.e.* for giving consent from Art. 20, para. 2 and Art. 21 of the said law and that there is no statute of limitations, it is evident that such an appeal is not grounded (HCRC, Kž-eun 7/2020-4 of 26 February 2020).

6. Determining the Competent Judicial Authorities

Certain difficulties may arise in determining the competent authority to issue an EAW, and the indirect involvement of the European Judicial Network (EJN) may be required to help eliminate them. When it comes to issuing an EAW, the main goal is for the competent judicial body to receive an order in the shortest possible time (Ivanović & Totić, 2017, p. 137). According to Art. 6 of the Framework Decision, the issuing judicial authority shall be the judicial authority of the

issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State. In Art. 6 of the LJCCM-EU the competent authorities are listed in detail, so EAW for the purpose of handing over the requested person for prosecution is issued by the judicial body conducting the proceedings, and for the purpose of execution of imprisonment or forced eviction, by the judge of the county court. However, the question of jurisdiction is not yet clear, which is confirmed by the following decision of the Supreme Court in which the requested person P. Č. points out that his surrender was approved on the basis of an EAW issued by the Vienna State Attorney's Office, but that "the judgment of the Court of Justice in the merged cases Og and PI, Parquet de Lübeck (Case 508/18, ECLI:EU:T:2019) and Parquet de Zwickau (Case 82/19, ECLI:EU:T:2019) of 27 May 2019 took the position that the judicial authority issuing an arrest warrant within the meaning of Art. 6, para. 1 of the Framework Decision does not cover public prosecutors who, as part of the decision to issue an EAW, are directly or indirectly exposed to the risk of subordination to orders or individual instructions of the executive power, such as the Ministry of Justice." He therefore considers that the EAW was "issued by an unauthorized body", which is why the court should have refused to execute the EAW, *i.e.*, it should have previously determined "whether the State Attorney's Office in the Republic of Austria is exposed to the risk of subordination to orders or instructions of the executive power". In the said decision, the SCRC states that the appellant omits that the judgment of the Court of Justice of the EU in previously joined cases of 27 May 2019 referred to the issue of independence of German public prosecutors to whom, under German law, the Ministry of Justice may issue orders or individual instructions directly or indirectly, and their decisions to issue an EAW are subject to appeal to a court. The EAW issued for prosecution by the Austrian State Attorney was discussed in the judgment of the Court of Justice of the EU in the Parquet de Vienne case of 9 October 2019 (Case 489/19, ECLI:EU:T:2019), whereby the Court of Justice of the EU and the SCRC in case 5/2020-4 of 29 January 2020 (SCRC, 2020) reiterated the interpretation from the decision in the above-mentioned joined cases OG and PI, that the EAW system includes protection of procedural and fundamental rights of the requested person at two levels: when making a decision on national arrest warrant, and then, when making a decision on the EAW, whereby that oversight must be objective and independent. However, under Austrian law, the EAW, issued by the Austrian public prosecutor, must be confirmed by a court before being forwarded. Following the above, it should be concluded that the EAW issued by Austrian public prosecutors is a "court decision" within the meaning of Art. 1, para. 1 of the Framework Decisions (SCRC, 2020).

7. Application of EAW – Analysis of Acceptance, Rejection, Issued and Executed EAW

7.1. Research on the acceptance and rejection of EAW

The research included appeals to the Supreme Court of the Republic of Croatia. A random sample of 30 cases from 2020 and 2021 was selected. The aim was to determine the offenses for which the perpetrators were arrested, the reasons for the appeal and the acceptance or rejection of the EAW.

Chart 1 shows that the most common criminal offenses for which surrender is required are aggravated theft (30%), illicit trafficking in narcotic drugs and psychotropic substances (27%), and fraud (10%). The sample included 30 cases that ended up in the second instance court of the HCRC or the High Criminal Court from 2020 and 2021, and were selected by random sampling via the web page of the Supreme Court of the Republic of Croatia in which the case law is stated.

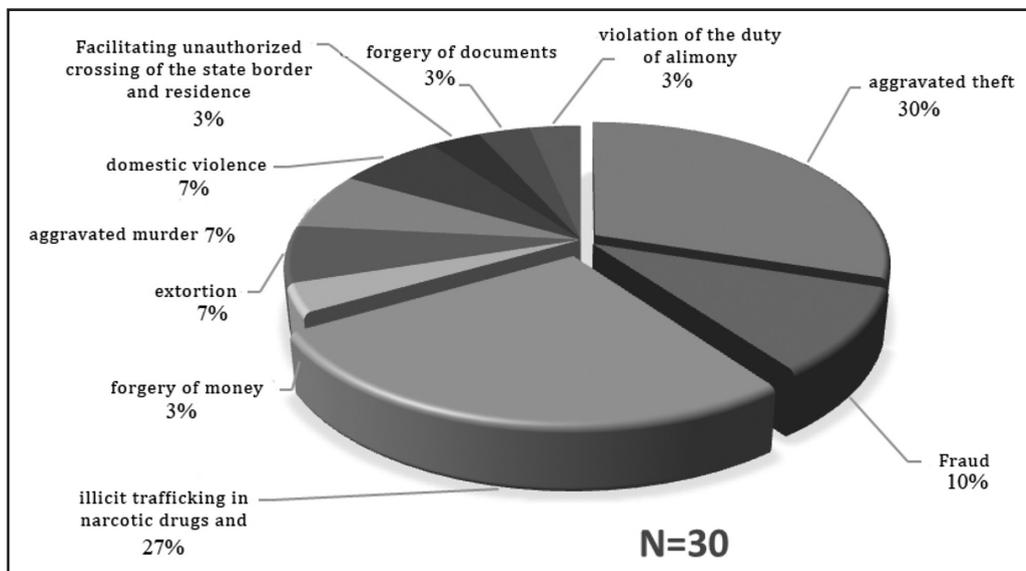


Chart 1. Offenses for which the EAW was issued
(Source: Case law, Supreme Court of the Republic of Croatia)

Chart 2 shows that the most common countries requesting the surrender of persons are Germany (37%), Italy (20%), Slovenia (17%), Austria (10%), which means that four countries have a share of 84% and these are countries bordering the Republic of Croatia or in the immediate vicinity.

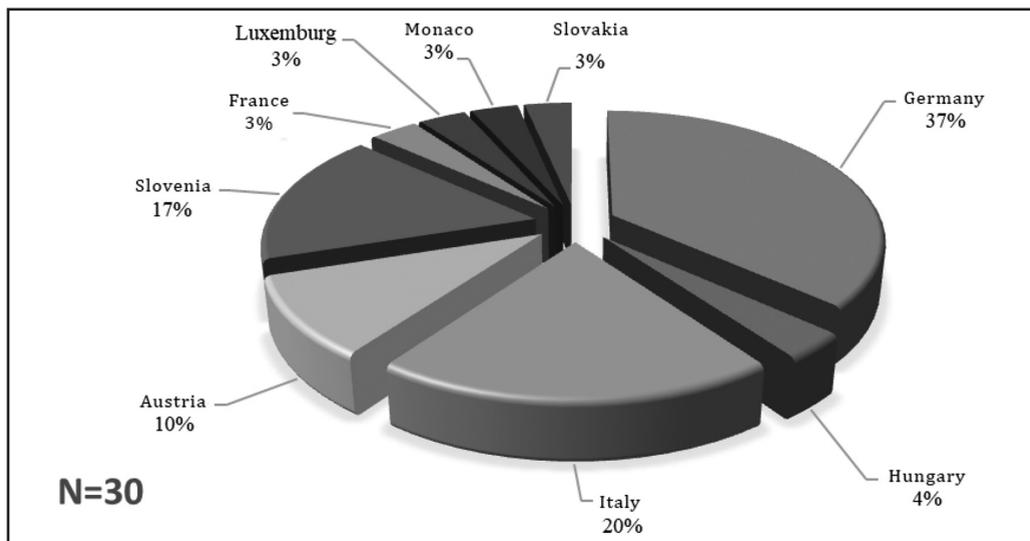


Chart 2. Countries requesting the surrender of persons from the Republic of Croatia
(Source: Case law, Supreme Court of the Republic of Croatia)

Chart 3 shows that out of 30 cases, in 83% of cases the appeal was rejected as unfounded, and in 17% the appeal was accepted and referred for reconsideration. In 17% or 5 cases, the appeal was accepted and referred for reconsideration.

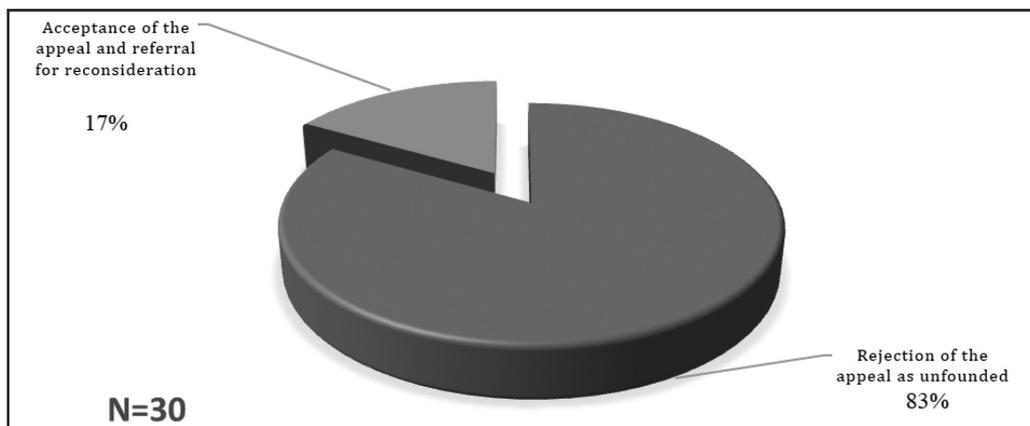


Chart 3. Appeals against the decision (acceptance or rejection)
(Source: Case law, Supreme Court of the Republic of Croatia)

Given the presented statistical indicators, by using the case study method, we will analyse the crimes in which the EAW was accepted, namely: aggravated theft and fraud in two cases, extortion in one case and facilitation of unauthor-

ized crossing of the state border in one case. As to the first case, the enforcement proceedings of the EAW issued by the Municipal Court in Baden-Baden, No. 9 Gs 819/20. of 8 October 2020 (Decision of the Municipal Court of Baden-Baden, 2020) was terminated due to the fact that the first instance court was informed that criminal proceedings were being conducted against the requested person E. I. D. before the Municipal Court in Vinkovci, in connection with the indictment of the Municipal State Attorney's Office in Vinkovci number KO-DO-819/2020 of 11 November 2020 (Indictment of the Municipal State Attorney's Office, 2020), which is an obligatory reason for terminating the enforcement proceedings of the EAW (SCRC, No. II Kž 5 / 2021-414 of 14 January 2021). In the second case, Art. 22, para. 3 of the LJCCM-EU stipulates that if the EAW is issued for the purpose of conducting criminal proceedings, and the requested person is a citizen of the Republic of Croatia or a person who has a residence or stay in its territory, the surrender of that person will be conditioned by his return to the Republic of Croatia, if a sanction is imposed on him in the issuing state, and that person has agreed to serve the imposed sanction in the Republic of Croatia. Considering that, according to the file, the requested person is a citizen of the Republic of Croatia, the first instance court was obliged to ask the requested person to comment on whether, in the event that a sanction is imposed in the issuing EAW country, he wants the sanction to be executed in the RC, and if he admits, the surrender of the requested person is to be conditioned in accordance with the cited legal norm, which the first instance court failed to do, thus violating the criminal law to the detriment of the requested person (High Criminal Court, No. Kž-eun-9/2021-4 of 16 April 2021). In the third case, the first instance court, approving the surrender of the requested person, who has permanent residence and approved permanent residence in the Republic of Croatia, failed to give reasons on special conditions for the execution of the EAW from Art. 22, para. 3 of the LJCCM-EU. Given the attachment of the requested person to the territory of the Republic of Croatia, the surrender of the requested person should have been conditioned by his return to the Republic of Croatia if a sanction was imposed in the issuing state, if he agreed to serve that sanction in the Republic of Croatia (SCRC, No. Kž-eun 32/2020-4 of 26 November 2020).

From the case study of the fourth case, *i.e.*, in the repeated procedure, the first instance court will act as stated in this decision and will urgently inform the United Kingdom through the competent authorities of the Republic of Croatia and request a statement regarding the extradition of its citizen to a country outside the EU – Principality of Monaco. If the United Kingdom is not interested in surrendering its national, the court of first instance will examine whether the extradition could jeopardize the rights under Art. 19 of the EU Charter and will

re-examine the existence of legal requirements for extradition under domestic law, after which, taking into account that bail is imposed on the extradited person as a precautionary measure as a substitute for extradition detention, the court will urgently make a new decision which will then be duly explained (HCRC, No. I Kž 542/2020-6 of 12 October 2020). In the fifth case, it is evident that the first-instance court failed to give reasons on the special conditions for the execution of the EAW under Art. 22, para. 4 of the LJCCM-EU, *i.e.*, it failed to determine whether the requested person agreed to serve his sentence in the Republic of Croatia, on which the decision on EAW also depends. Due to the mentioned omission, the challenged decision cannot be examined, so it should have been revoked and the case should have been referred to the first instance court for a new decision (HCRC, No. Kž-eun 19/2020-4 of 27 August 2020).

In addition to the previously analysed cases, it is important to point out the data on the duration of surrender of a person, and Filipović (Filipović, 2012, p. 199) through an analysis covering the period from 2005 to 2009, for at that time 27 EU member states, pointed out that in case the person gave consent for surrender from the moment of arrest until the decision on surrender the average time of extradition was 16 days, and in case the person did not consent to surrender, the average duration of surrender was 48 days.

7.2. Analysis of issued and executed warrants

Regarding the analysis of issued and executed orders, Chart 4 shows the application of EAW in the countries that had the largest number of issued warrants, more precisely in ten countries and the Republic of Croatia in a period of five years. According to the number of warrants, Germany leads with 13,260 warrants, followed by Poland with 12,392 EAWs. Comparing the number of issued and executed warrants, it is evident that Poland has the so-called efficiency of 51.13%, followed by the Czech Republic with 47.57%, Romania with 47.26%, Germany with 43.59%, Austria with 37.44% and Croatia with 32.02%. The data further show a positive trend, which can be explained, for example, in Poland, which has the highest number of EAWs issued, and looking at the first period in which there were 2,961 EAWs issued and the last period in which there were 2,394 EAWs, a decrease of 19.15% can be noticed. Regarding the executed orders for the same country in the initial observed period there were 1,120 executed EAWs, and in the last observed period there were 1,428 which means that there was a higher realization by 27.50%.

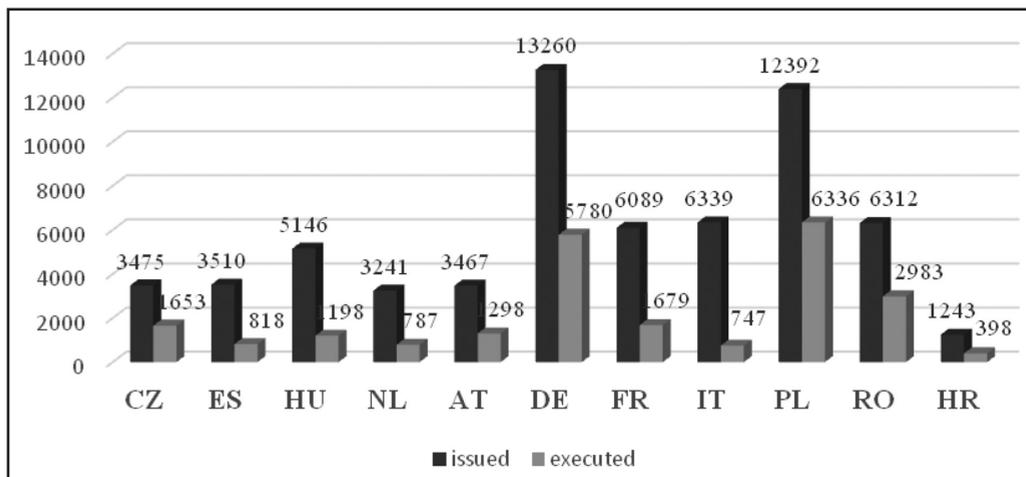


Chart 4. Comparative overview of the total number of issued and executed EAWs for the period from 2014 to 2018

(Source: Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Year 2018, European Commission, Brussels, pp. 27, 28.)

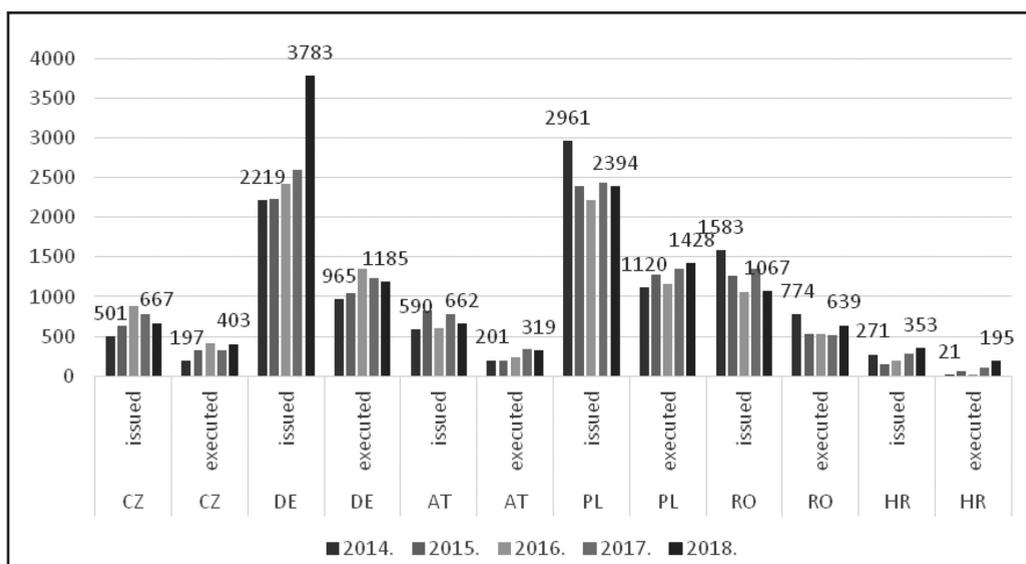


Chart 5. Comparative overview by years of the observed period from 2014 to 2018 of the number of issued and executed EAWs

8. Concluding Remarks

The research shows that EAW is efficient and functional, which can be concluded from the ratio between the number of issued and executed warrants. In other words, there is a visible trend of decreasing warrants issued, but at the same time there is a greater number of executions, which is a clear indicator of the efficiency and effectiveness of the institutions in charge of implementation. However, through the normative analysis, it is evident that there are shortcomings, even in basic institutes such as the statute of limitations, but also as regards doubts about the competence of the body for the implementation of the EAW. The case law of the Supreme Court and the High Criminal Court shows that there are frequent cases of appeals against extradition and attempts to postpone extradition, for which a number of reasons are required, most often what is called into question is stating special conditions for the execution of the EAW, then the omissions in determining the consent of the requested person to serve the sentence, etc. In order to further increase efficiency, the solution might be to adopt a completely new Framework Decision according to the ICC and ICTY model, given that these extraditions were effective despite the fact that they involved high-ranking state officials and the warrants were not re-examined to such an extent because it is in everyone's interest for all crimes to be prosecuted.

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PRIMENA EVROPSKOG NALOGA ZA HAPŠENJE

Sažetak

U radu je prikazan Evropski nalog za hapšenje koji se bazira na načelu uzajamnog priznavanja i na načelu efikasne saradnje što su temelji pravosudne saradnje u krivičnopravnim stvarima. Autori u radu analiziraju postoje li prepreke za uzajamno priznavanje odluka te koliko je efikasna saradnja kod Evropskog naloga za hapšenje. U radu je sprovedeno istraživanje žalbi na Evropski nalog za hapšenje koje su upućene Vrhovnom sudu i Visokom kaznenom sudu RH. Cilj je na slučajnom uzorku utvrditi koja su krivična djela najčešće predmet Evropskog naloga za hapšenje, te brojnost odbijanja, odnosno prihvatanja žalbi na Evropski nalog za hapšenje. Posebno su kroz metodu studije slučaja analizirani predmeti u kojima je došlo do prihvatanja žalbe, odnosno koje su bile manjkavosti prvostepeni sudova prilikom donošenja odluka. Prema dostupnim podacima izvršena je i analiza o broju izdatih i izvršenih naloga za pojedine države u razdoblju od 2014. do 2018. iz koje se vidi funkcionalnost implementacije.

Ključne reči: Evropski nalog za hapšenje, žalba, načelo efikasne saradnje.

Primljeno: 29. 9. 2021.

Prihvaćeno: 14. 3. 2022.