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Selected problems of the functioning of the European Arrest Warrant (EAW)

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1. Introduction

The ideas and values behind the creation of the European Arrest Warrant (EAW) were, in many respects, a response to the challenges posed to the European Union (EU) following the signing of the Maastricht Treaty on 7 February 1992 (Treaty on European Union, TEU). This treaty structured the EU around three pillars: the European Communities, the Common Foreign and Security Policy (CFSP), and cooperation in the area of Justice and Home Affairs (JHA).¹ A key provision for the establishment of the EAW was Article 34 of the Maastricht Treaty, which enabled the issuance of framework decisions aimed at harmonizing the laws and regulations of Member States. These framework decisions are binding on EU Member States in terms of the outcomes they must achieve. However, the method, means, and form of their implementation remain within the discretion of individual Member States, preserving a degree of autonomy in integrating these measures

¹ Information documents on the European Union – 2023, www.europarl.europa.eu/factsheets/pl (access: 13.02.2023).

into their national legal systems.² This flexibility was intended to respect the diversity of legal traditions among EU countries. Nonetheless, this approach can also result in significant discrepancies in how these solutions are applied.

The European Arrest Warrant (EAW) was introduced under the Council Framework Decision of 13 June 2002. Consequently, Member States were required to take all necessary measures to implement the relevant legislation by the end of 2003. The introduction of the EAW led to significant reforms and the abrogation of several conventions that had previously governed extradition procedures within the EU.³ Specifically, the Framework Decision concerning the EAW repealed provisions in the European Convention on Extradition of 13 December 1957 (along with its two additional protocols), the European Convention on the Suppression of Terrorism of 27 January 1977 (insofar as it related to extradition), and Chapter 4 of Title III of the Schengen Convention of 14 June 1985, which addressed the gradual abolition of checks at internal borders.⁴ Furthermore, the Council took additional steps towards replacing formal extradition processes with a system of surrender between the judicial authorities of Member States. These efforts were guided by the principles of subsidiarity and proportionality, recognizing the limitations of the 1957 Convention, which had failed to fully eliminate multilateral extradition procedures between states. As noted in the introduction of the Framework Decision, the EAW has become a “cornerstone” of judicial cooperation within the EU.⁵ It represents a further step in deepening integration among Member States, advancing coopera-

² P. Hofmański, *Europejski nakaz aresztowania w teorii i praktyce państw członkowskich Unii Europejskiej*, Warszawa 2008, pp. 22–23.

³ Commission communication of 28 September 2017, Handbook on how to issue and execute a European Arrest Warrant, C/2023/1270, p. 11.

⁴ M.B. Janicz, *Europejski nakaz aresztowania: (wybrane zagadnienia)*, in: *Prawo, administracja, policja: księga pamiątkowa profesora Wincentego Bednarka*, ed. J. Dobkowski, Olsztyn 2006, p. 254.

⁵ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ.EU.L of 2002 No. 190, p. 1.

tion to an ever-higher level, and affecting various aspects of life for EU citizens.

It is important to note that the European Arrest Warrant (EAW) emphasizes its practical dimension, primarily driven by the need to combat rising crime and simplify extradition proceedings, which are traditionally complex and lengthy.⁶ Through the EAW, Member States are fostering cooperation in the field of criminal law, advancing legislative harmonization, and contributing to a shared legal framework across the EU. The significance of the EAW extends beyond the state level, offering EU citizens the assurance of uniform rights and standards across all EU countries. The EAW serves as a tangible reflection of the EU's evolving approach to freedom, justice, and security.⁷ For the EAW to operate effectively, open dialogue between the competent authorities in Member States responsible for issuing and executing warrants is essential. Additionally, the exchange of experiences and techniques is becoming increasingly necessary to enhance crime detection and uphold the protective function of criminal law. However, to fully understand the practical workings of the EAW, it is necessary to analyse the mechanism through concrete examples.

2. Principle of mutual recognition of judgments in relation to the EAW

The principle of mutual recognition of judgments traces its origins to 1999, when it was introduced at the European Council meeting in Tampere as a foundation for creating a European area of justice. At that time, Member States acknowledged the need to reform cooperation within the EU by fostering greater compatibility between their legal systems. This principle played

⁶ J. Hołub, *Europejski nakaz aresztowania*, "Przegląd Bezpieczeństwa Wewnętrznego" 2009, No. 1, p. 126.

⁷ T. Ostropolski, *Problemy konstytucyjne państw członkowskich Unii Europejskiej w związku z Europejskim Nakazem Aresztowania*, "Prokuratura i Prawo" 2006, No. 5, p. 118.

a crucial role in the development and operation of the European Arrest Warrant (EAW) mechanism.⁸ Its importance is highlighted in paragraph 37 of the Tampere European Council Conclusions, which states: “The European Council asks the Council and the Commission to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition. In this programme, work should also be launched on a European Enforcement Order, and on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States”.⁹ It is important to emphasize that these initiatives were intended to be both dualistic and balanced. On one hand, the goal was to harmonize certain aspects of criminal law across Member States; on the other, EU countries were to retain their fundamental legal principles.

The principle of mutual recognition is particularly crucial for the European Arrest Warrant (EAW), as its implementation ensures the effective operation of the *ne bis in idem* principle, which is extremely important for the effective operation of the warrant. However, it was only with the EAW Framework Decision that the principle of recognizing all judicial decisions in criminal matters was formally introduced.¹⁰ The creation of the European Arrest Warrant marked a new chapter in the history of judicial cooperation between EU Member States, and thus the EAW is rightly considered a “cornerstone” in this regard.¹¹ The core of the mutual recognition principle is that judicial decisions issued by a court in

⁸ A. Górski, A. Sakowicz, *Komentarz do Decyzji Ramowej Rady Unii Europejskiej w sprawie Europejskiego Nakazu Aresztowania*, in: *Prawo Wspólnot Europejskich a prawo polskie*, Vol. 6, ed. E. Zielińska, Warszawa 2005, pp. 266–314.

⁹ Point 37 of the Conclusions of the European Council (Tampere, 15–16 October 1999), <https://www.consilium.europa.eu/pl/european-council/conclusions/1993-2003/> (access: 22.05.2023).

¹⁰ A. Górski, A. Sakowicz, *op.cit.*, pp. 266–314.

¹¹ Recital 6 of the preamble to the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ.EU.L of 2002 No. 190, p. 1.

one Member State are automatically enforced by the authorities of another.¹² This principle is explicitly enshrined in Article 82 of the Treaty on the Functioning of the European Union (TFEU), underscoring its significance and making its application mandatory for Member States.¹³ The introduction of this principle has furthered integration in both police and criminal judicial cooperation within the EU. All of these elements converge in the EAW mechanism, from its issuance and procedural execution to the final enforcement of the warrant.¹⁴ However, mutual recognition does not imply that the executing state must automatically and unconditionally accept every decision issued by another Member State. There are several conditions of admissibility and grounds for refusal of execution, designed to ensure the proper application of the EAW and protect the rights of the individuals concerned. Member States are thus obligated to apply the principle of mutual recognition, but they are also required to ensure the legality of decisions and the correct application of law. If a violation occurs, executing a judgment without verifying its legality would itself be unlawful. It is also important to refer to the position of the Supreme Court, which, in the context of the EAW based on the high level of mutual trust between Member States, and the principle of mutual recognition, which is a key factor in the effective operation of the mechanism, emphasized that, in exceptional circumstances, it is permissible to examine whether the judicial authority issuing the EAW is indeed authorized, as listed by the relevant EU state.

In the light of the above, it is important to address the issue of the rule of law, a topic that has been under discussion within the European Union for several years. Concerns about the rule of law have led Member States to question the safety of transferring individuals subject to a European Arrest Warrant (EAW). A pivotal case in this regard is the ruling of the Court of Justice of

¹² G. Krysztofiuk, *Europejski nakaz aresztowania – dalszy ciąg problemów*, "Edukacja Prawnicza" 2006, No. 2, p. 29.

¹³ Article 82 of the Treaty on European Union (consolidated version), Journal of Laws of 2004 No. 90, item 864/30.

¹⁴ J. Hołub, *Europejski nakaz aresztowania*, "Przegląd Bezpieczeństwa Wewnętrznego" 2009, No. 1, p. 126.

the European Union (CJEU) in the matter of Artur Celmer, a Polish citizen accused of drug trafficking.¹⁵ Poland sought to utilize the EAW mechanism to request Celmer's arrest. In 2017, he was apprehended in Ireland and case was then brought before an Irish court, which was tasked with deciding whether to extradite him to Poland. During the hearing, however, Celmer and his legal team raised objections to the execution of the EAW, citing concerns over recent reforms in the Polish judicial system that could compromise his right to a fair trial. These objections were rooted in fears that Celmer's fundamental rights, particularly his right to a fair trial, could be violated if he were extradited to Poland. As a result, the Irish court referred a preliminary question to the CJEU, seeking guidance on whether the defendant should be extradited under such circumstances, given the provisions of the EAW. The Irish court's referral was based on Article 47 of the Charter of Fundamental Rights of the European Union,¹⁶ which is closely tied to Article 2 of the Treaty on European Union (TEU).¹⁷ These rights are fundamental to the principle of mutual trust between Member States, which underpins the operation of the EAW and the broader principle of mutual recognition of judicial decisions. In its ruling, the CJEU recognized that, in exceptional cases, it may be necessary to limit the application of mutual recognition principles.¹⁸

Regarding the issue of judicial independence, the Court emphasized that it "forms part of the essence of the fundamental right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be

¹⁵ Judgment of the Court of Justice of 25 July 2018 in Case C-216/18 PPU, <https://curia.europa.eu/juris/liste.jsf?num=C-216/18&language=pl> (access: 22.05.2023).

¹⁶ Article 47 of the Charter of Fundamental Rights of the European Union of 7 December 2000, OJ.EU.C of 2016, No. 202, p. 389.

¹⁷ Article 2 of the Treaty on European Union (consolidated version), Journal of Laws of 2004 No. 90, item 864/30.

¹⁸ J. Dębicki, *Postanowienie o odmowie wydania podejrzanego, oskarżonego lub skazanego na podstawie Europejskiego Nakazu Aresztowania a gwarancja prawa podstawowego do niezawisłego sądu – kilka uwag nad wyrokami TSUE w sprawach C 216/18 PPU (LM) i Sprawa C 354/20 PPU (L)*, "Tutoring Gedanensis" 2021, No. 6(3), p. 97.

protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded”.¹⁹ In addition, the “Celmer test” was established based on the CJEU ruling of 25 July 2018, which addresses the refusal to execute a European Arrest Warrant (EAW) when there is a threat to the fundamental right to an independent judiciary. A general rule was introduced to apply whenever confidence in the judiciary of a Member State is called into question. In such cases, the Celmer test consists of two stages. The first stage assesses whether there is a general threat to the independence of the judiciary in a given country. The second stage, through a more specific analysis, examines whether the particular circumstances in that country present a risk of an unfair trial for the individual subject to the EAW request. As the CJEU highlighted, the key actions in this case will involve invoking Article 15(2) of the Framework Decision on the EAW and requesting the issuing authority to transfer supplementary information from which to assess potential risks.²⁰ If both stages of the Celmer test confirm such risks, the executing authority may refuse to carry out the warrant.²¹

In the case under review, it should be noted that, based on the CJEU judgment, the Irish court ultimately ordered Artur Celmer’s transfer to Poland. While the Irish court acknowledged concerns about the independence of the Polish judiciary, it determined that the defendant’s right to a fair trial was not at risk in this specific instance.²² This case suggests that if there is a real possibility of a violation of the right to a fair trial for a particular defendant or convicted individual, it is likely to result in a refusal to execute the European Arrest Warrant (EAW). However, it is important to emphasize that a general acknowledgement of irregularities within

¹⁹ Judgment of the Court of Justice of 25 July 2018 in case C 216/18 PPU, <https://curia.europa.eu/juris/liste.jsf?num=C-216/18&language=pl> (access: 22.05.2023).

²⁰ Article 15 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ.EU.L of 2002 No. 190, p. 1.

²¹ J. Dębicki, *op.cit.*, p. 98.

²² *Ibidem*.

the judicial system of a Member State is not, on its own, sufficient grounds for a blanket refusal to surrender individuals subject to an EAW. On the other hand, if an EU Member State commits a serious and flagrant violation of the values enshrined in Article 2 of the Treaty on European Union (TEU)²³, the refusal to execute an EAW would be strongly justified.²⁴ The Celmer case and the related CJEU ruling affirm that each case must be assessed individually. Furthermore, only a thorough analysis of the specific risks to an individual's rights in the issuing country can determine whether the threat is genuine and would lead to an improper execution of the EAW.

3. Brexit and the use of the EAW

The European Arrest Warrant (EAW) is based on the mutual recognition of judicial decisions and a foundation of trust between EU Member States. The United Kingdom's withdrawal from the European Union (Brexit) has had a significant normative impact on relations between the UK and the EU, leading to numerous regulatory changes. Several mechanisms and institutions that operated under pre-Brexit rules required adaptation, including the EAW. The EAW operates through the Framework Decision, with the Court of Justice of the European Union (CJEU) overseeing its proper implementation, and, therefore, Brexit made it impossible for the warrant to continue to operate with respect to the United Kingdom. At the core of Brexit is the UK's complete disengagement from EU judicial authority, which includes rejecting the influence of the CJEU over domestic legal matters.²⁵ As the EAW's mechanism for ensuring compliance could no longer operate effectively without CJEU oversight, its continued use regarding the UK was no longer viable. Consequently, EU Member States

²³ Article 2 of the Treaty on European Union.

²⁴ J. Dębicki, *op.cit.*, pp. 99–100.

²⁵ B. Błaszczak, *Europejski Nakaz Aresztowania po opuszczeniu Unii Europejskiej przez Wielką Brytanię*, "Prokuratura i Prawo" 2018, No. 4, p. 134.

had to seek alternative solutions to manage EAW procedures that were initiated before Brexit. In response, the transitional provisions of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community were applied.²⁶ This ensured that individuals subject to EAW orders during the Brexit transition period retained their rights and that legal proceedings would continue under the pre-existing rules.

However, since the Framework Decision could no longer function as it had before, it became necessary to establish a new agreement between the European Union and the United Kingdom, now classified as a third country following its withdrawal from the EU. To this end, negotiations led to the adoption of an agreement that outlines the framework for continued judicial cooperation between the UK and the EU.²⁷ The Trade and Cooperation Agreement between the European Union, the European Atomic Energy Community, and the United Kingdom of Great Britain and Northern Ireland came into effect on 1 January 2021, regulating, among other matters, the European Arrest Warrant (EAW) mechanism.²⁸ As a result, the EAW Framework Decision ceased to apply as of the agreement's entry into force. Instead, transfers between the UK and the EU are now governed by the provisions of the 1957 European Convention on Extradition and its additional protocols,²⁹ as well as the European Convention on the Suppression of Terrorism

²⁶ Article 62 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ.EU.C of 2019 No. 66I, p. 1.

²⁷ A. Gajda, *Wpływ Brexitu na współpracę sądową w sprawach karnych w Unii Europejskiej*, "Przegląd Europejski" 2020, No. 1, pp. 47–49.

²⁸ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ.EU.L of 2021, No. 149, p. 10.

²⁹ European Convention on Extradition, drawn up in Paris on 13 December 1957, Additional Protocol to the above Convention, drawn up in Strasbourg on 15 October 1975 and Second Additional Protocol to the above Convention, drawn up in Strasbourg on 17 March 1978, OJ of 1994 No. 70, item 307.

concerning extradition.³⁰ The agreement also addresses transitional arrangements, stipulating that the new regulations apply to EAWs issued before 31 December 2020, but only if the requested individual had not yet been detained by that date.³¹

In the case of the UK and the European Arrest Warrant (EAW), a form of regression in judicial cooperation can be observed following Brexit. This marks a partial return to the principles of traditional extradition. However, the Trade and Cooperation Agreement is significantly more detailed than previous conventions. It introduces clearer guidelines on issues such as information retention requirements, requests and responses, and cooperation with third countries. The primary aim of this approach was to preserve the legislative advancements achieved so far, ensuring better regulation of provisions related to the detention and confiscation of proceeds from crime. Moreover, similar to the Framework Decision, the Trade and Cooperation Agreement continues to rely on mutual assistance between participating countries.³²

With this in mind, it is important to note that efforts have been made to minimize the negative effects on individuals subject to extradition requests, and proceedings have largely continued without major complications. However, it has been impossible to fully avoid the undesirable consequences of the UK's exit from the European Union. The efficiency of international searches and the length of extradition proceedings have been affected primarily by the UK's exclusion from the Schengen *acquis*, its inability to access Europol databases, and its lack of participation in the SIENA secure criminal information exchange channel. Despite maintaining many elements of judicial cooperation between the UK and the EU or its Member States, some negative effects have been inevitable, such as increased procedural formalities and delays.³³

³⁰ European Convention on the Suppression of Terrorism, drawn up in Strasbourg on 27 January 1977, OJ of 1996 No. 117, item 557.

³¹ <https://www.ejn-crimjust.europa.eu/ejn2021/ContentDetail/PL/1/75> (access: 22.05.2023).

³² Ibidem.

³³ A. Furgała, *Brexit a polsko-brytyjska współpraca policyjna*, "Przegląd Policyjny" 2021, No. 141(1), pp. 235–236.

Brexit serves as an undesirable precedent in the context of judicial cooperation, mutual trust between EU countries, and the principle of mutual recognition of judgments. Should other Member States follow the UK's path in the future, it would raise serious questions about the values and very foundation of the EU.

4. The problem of juvenile offenders in the context of the EAW

The issue of juvenile offenders highlights certain shortcomings in the functioning of the European Arrest Warrant (EAW) mechanism. According to Article 3(3) of the EAW Framework Decision, a warrant can only be executed against a person who has reached the age of criminal responsibility.³⁴ This provision constitutes a mandatory ground for refusing to execute a European Arrest Warrant, leaving Member States no room for an expansive interpretation of the standard. The Court of Justice of the European Union (CJEU), in one of its judgments, provided clarity on the treatment of juvenile offenders under the EAW and outlined the duties of the judicial authority executing the warrant. The Court emphasized that the Framework Decision does not exclude the application of the EAW to all juveniles, but only to those who have not reached the age of criminal responsibility as defined by the law of the executing state. Thus, the Member State executing the warrant is required to determine the minimum age of criminal responsibility. The executing judicial authority must verify whether the individual has reached this age or meets additional conditions that allow for criminal liability, taking into account the offender's specific circumstances.³⁵ For example, Polish law, under Article 10(1) and (2) of the Criminal Code, provides that minors

³⁴ Article 3 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ.EU.L of 2002 No. 190, p. 1.

³⁵ Judgment of the Court of Justice of 23 January 2018 in case C-367/16, <https://curia.europa.eu/juris/document/document.jsf?jsessionid=DA6D805AC52C43228E3D6E2F5CCF211D?text=&docid=198646&pageIndex=0&docl>

under the age of 17 may be held criminally responsible if the conditions outlined in Article 10(2) are fulfilled.³⁶ Therefore, under Polish law, a minor can be held liable in two specific ways. This provision would also apply to juvenile offenders subject to an EAW in cases where Poland is the executing country. In the context of this example, it is important to note that the determination of criminal liability based on age is made according to Polish law, regardless of where the crime was committed or which Member State imposed the sentence. However, if a person cannot be held criminally responsible under the law of the issuing state owing to their age, the EAW mechanism will not be applicable, even if Polish law allows the minor to be treated as an adult offender. Otherwise, the purpose of transferring a juvenile offender to the issuing state would not be to conduct criminal proceedings, and so the fundamental requirements for applying the EAW mechanism would not be met.

It is important to emphasize that the legislation of the executing state is decisive when determining the applicability of the European Arrest Warrant (EAW) to juvenile offenders. If a juvenile does not meet the age of criminal responsibility as defined by the executing state's law, he or she is categorically excluded from the scope of the EAW.³⁷ Given that the EAW serves as the primary mechanism for criminal law cooperation between EU Member States, the current regulation regarding juvenile offenders is relatively underdeveloped and raises significant concerns. The introduction of the EAW was aimed at harmonizing national laws and fostering legislative uniformity to support the principle of mutual recognition of judgments across Member States. However, in the case of juvenile offenders, this goal seems difficult to

ang=PL&mode=lst&dir=&occ=first&part=1&cid=16178436, OJ.EU.C of 2018 No. 104, p. 7.

³⁶ Article 10 of the Act of 6 June 1997 – Criminal Code, Journal of Laws 1997 No. 88, item 553.

³⁷ A. Statkiewicz, *Ochrona małoletnich w postępowaniu karnym w Unii Europejskiej*, in: *Współczesne koncepcje ochrony wolności i praw podstawowych*, eds. A. Bator, M. Jabłoński, M. Maciejewski, K. Wójtowicz, Wrocław 2013, p. 163.

achieve, as most EU countries have distinct regulations on the criminal responsibility of minors. These differences are not limited to the age at which individuals can be held criminally liable, but extend to legal interpretations, doctrinal approaches, and even cultural or customary practices. This creates challenges for the judicial authority of the executing state, which may struggle to assess the maturity and criminal responsibility of a foreign juvenile offender through the lens of domestic law. Such an assessment typically involves evaluating the mental state of the offender, the circumstances of the crime, and the personal characteristics of the individual committing a crime. Moreover, the enforceability of the EAW is generally based on the alleged criminal act rather than a detailed assessment of the offender's characteristics. This procedural gap can lead to erroneous decisions, as the EAW mechanism does not mandate a thorough evaluation of the juvenile during the proceedings. Additionally, the EAW mechanism fails to account for the differences in the juvenile justice systems across Member States.³⁸ As a result, the judicial authorities of the executing state are often required to make decisions based solely on domestic law, which may differ substantially from the legal framework of the issuing state. This can lead to an overly superficial qualification of juvenile offenders and potentially flawed decisions regarding the enforceability of the EAW.

When addressing the issue of juvenile offenders in the context of the European Arrest Warrant (EAW), it is important to highlight the procedural safeguards for minors as set out in Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016. This directive provides procedural safeguards for children who are suspects or accused persons in criminal proceedings.³⁹ Unlike Article 3(3) of the EAW Framework Decision, which presents challenges due to the diversity of national legal systems, the directive offers a more consistent approach. The safeguards provided

³⁸ P. Hofmański, *op.cit.*, pp. 164–168.

³⁹ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused in criminal proceedings, OJ.EU.L of 2016 No. 132, p. 21.

under this directive apply from the moment a minor is arrested by the executing state in relation to an EAW. Key rights include the right to be informed, the right for the person holding parental responsibility to be notified, the right to legal assistance, the right to medical examination, the right to special treatment if deprived of liberty, the right to privacy, and the right to have the person holding parental responsibility present during the proceedings.⁴⁰ Additionally, the directive emphasizes that Member States must prioritize the best interests of the child, in line with Article 24 of the EU Charter of Fundamental Rights.⁴¹ These procedural rights for minors subject to an EAW request are clear and binding across the EU. However, while the procedural rights of minors are well-defined, the broader issue of juvenile offenders in the context of the EAW remains fragmented. Judicial authorities in Member States often make decisions on the enforceability of EAWs without sufficient resources or full knowledge of the case's circumstances. This highlights the need for a more unified approach across the EU regarding the age of criminal responsibility, which could help to overcome differences in legal systems or customs.

5. Conclusions

In conclusion, based on the issues discussed, it is evident that the European Arrest Warrant (EAW) is not a flawless or fully effective mechanism, nor does it entirely achieve its original objectives. Several systemic shortcomings persist, which the European Union has addressed to varying degrees. Regarding the principle of mutual recognition of judgments in relation to the rule of law, the Court of Justice of the European Union (CJEU) has played a crucial role in overseeing the EAW mechanism. The CJEU has provided

⁴⁰ Commission communication of 28 September 2017, Handbook on how to issue and execute a European Arrest Warrant, p. 67.

⁴¹ Recital 8 of Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused in criminal proceedings, OJ.EU.L of 2016 No. 132, p. 1.

solutions to regulatory gaps within the system, offering Member States guidance on how to navigate challenges while upholding the rule of law. However, the issue of juvenile offenders remains a significant challenge, as the EAW lacks clear, detailed regulations on this matter. Since its inception, the EAW framework has failed to adequately address the complexities of juvenile responsibility, leaving judicial authorities to act based on incomplete data. This deficiency undermines the overall effectiveness of the mechanism. On a more positive note, the EAW has reduced formalism and expedited legal processes, particularly in comparison to traditional extradition procedures. The impact of Brexit has underscored these benefits, as the United Kingdom's departure from the European Union led to a partial return to traditional extradition, which lacks some of the streamlined features that the EAW offers, thus hindering the efficiency of crime-fighting efforts. Nevertheless, Brexit also revealed an oversight in the Framework Decision's provisions: it did not account for the possibility of a Member State ceasing to participate in the EAW mechanism. This gap highlights the assumption that the EAW would be indefinitely applicable, an assumption that proved overly optimistic. While the intentions behind the creation of the EAW are clear and laudable, practical implementation has raised concerns about the mechanism's long-term effectiveness. In conclusion, the EAW's functioning cannot be assessed unequivocally. However, there is potential for improvement, and revising certain aspects of the mechanism could significantly enhance its efficiency and overall impact.

SUMMARY

Selected problems of the functioning of the European Arrest Warrant (EAW)

A practical approach to the European Arrest Warrant makes possible a clear presentation of both the positive and negative aspects of this mechanism. Therefore, the problem of the principle of mutual recognition of judgments in the Member States, also in relation to the varying degrees of the rule of law in the European Union countries, can be indicated.

Another issue is the need to discontinue the use of the European Arrest Warrant in a country which has left the European Union. In this case, the situation should be considered of individuals covered by an EAW during the process of a given country's exit from the European Union, but also after the procedure. Worth noting is the problem of juvenile delinquents and the possibility of using the European Arrest Warrant against them. The presented issues enable making visible the benefits resulting from the introduction and validity of the European Arrest Warrant, as well as the problems that are the consequence of its use.

Keywords: European Arrest Warrant; European Union; Member States; Brexit; the principle of mutual recognition of judgments; juvenile delinquents

STRESZCZENIE

Wybrane problemy funkcjonowania Europejskiego Nakazu Aresztowania (ENA)

Praktyczne ujęcie funkcjonowania Europejskiego Nakazu Aresztowania pozwala na wyraźne przedstawienie zarówno pozytywnych, jak i negatywnych aspektów tego mechanizmu. Można zatem wskazać m.in. na problem zasady wzajemnego uznawania orzeczeń w państwach członkowskich, również w odniesieniu do zróżnicowanego stopnia praworządności w państwach Unii Europejskiej. Kolejną kwestią jest konieczność zaprzestania stosowania Europejskiego Nakazu Aresztowania wobec państwa, które wystąpiło z Unii Europejskiej. W tym przypadku należy rozważyć sytuację osób objętych wnioskiem ENA w trakcie procesu wyjścia danego państwa z UE, ale także po zakończonej procedurze. Dostrzeżenia wymaga również problem nieletnich sprawców przestępstw oraz możliwości zastosowania wobec nich Europejskiego Nakazu Aresztowania. Przedstawione zagadnienia pozwalają zatem dostrzec zarówno korzyści płynące z wprowadzenia i obowiązywania Europejskiego Nakazu Aresztowania, jak i problemy, które są konsekwencją jego stosowania.

Słowa kluczowe: Europejski Nakaz Aresztowania; Unia Europejska; państwa członkowskie; brexit; zasada wzajemnego uznawania orzeczeń; nieletni sprawcy przestępstw

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