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EUROPEAN ARREST WARRANT IN THE SYSTEM OF LAW ENFORCEMENT ACTIVITIES

ЄВРОПЕЙСЬКИЙ ОРДЕР НА АРЕШТ У СИСТЕМІ ПРАВООХОРОННОЇ ДІЯЛЬНОСТІ

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This article is devoted to the research of the institution of the European arrest warrant through the prism of the implementation of the Framework Decision of the European Council "On the European arrest warrant and procedures for the transfer of offenders between member states" dated June 13, 2002. In this context, both negative and positive experience of individual member states of the European Union, its actual impact on extradition legislation and the system of international cooperation in the field of law enforcement are analyzed.

Any member state of the European Union has unique consequences from the process of convergence of national legislative acts, because each country has its own "traditions" in the interpretation and application of their provisions, as well as in the applied use of doctrinal developments of certain interdisciplinary institutes. At the same time, it is extremely important that the relevant norms of criminal and criminal procedural law of the member states of the Union reach the maximum degree of coherence.

It should be emphasized that the procedure of implementing the Framework Decision on the European Arrest Warrant into the national legislation of the countries was marked by a number of decisions of national constitutional control bodies (Constitutional Courts or Tribunals) regarding recognition of the relevant implementing documents as unconstitutional. Finally, European integration led to the emergence of a new model of interstate interconnection – the neutralization of legal contradictions at the constitutional level.

The work states the necessity to develop a general concept of harmonization of thematic domestic legislation, because the enforcement of only some means stipulates the problem of interpretation of existing mechanisms by regional law enforcement practice, which significantly reduces the effectiveness of the issued warrant. Therefore, the consistent convergence of the laws of the member states of the European Union and the construction of unified standards are guarantees that such a tool as the European warrant can be effectively implemented in the field of obstruction a wide range of cross-border crime by a single and integral law enforcement system of a supranational association.

Key words: extradition, law enforcement activity, European arrest warrant, integration, implementation, European Union.

У презентованій статті досліджено інститут європейського ордеру на арешт крізь призму імплементації Рамкового рішення Європейської Ради «Про європейський ордер на арешт та процедури передачі правопорушників між державами-членами» від 13 червня 2002 р. У даному контексті проаналізовано як негативний, так і позитивний досвід окремих держав-членів Європейського Союзу, його актуальний вплив на екстрадиційне законодавство та систему міжнародного співробітництва у правоохоронній сфері.

Будь-яка держава-учасниця Євросоюзу має характерні лише для неї наслідки від процесу зближення національних законодавчих актів, адже у кожній країні існують свої «традиції» в інтерпретації, застосуванні їх положень, а також у прикладному використанні доктринальних розробок певних міжгалузевих інститутів. При цьому надзвичайно важливо, щоб релевантні норми кримінального та кримінального процесуального права держав-членів Союзу досягли максимального ступеня узгодженості.

Слід наголосити, що процедура імплементації Рамкового рішення про європейський ордер на арешт у вітчизняне законодавство країн ознаменувалася низкою рішень органів національного конституційного контролю (Конституційних Судів або Трибуналів) щодо визнання неконституційними відповідних імплементаційних документів. Урешті-решт європейська інтеграція призвела до виникнення нової моделі міждержавної взаємодії – нівелізації юридичних суперечностей на конституційному рівні.

В роботі констатована необхідність вироблення загальної концепції гармонізації тематичного внутрішнього законодавства, адже впровадження тільки деяких засобів обумовлює проблему тлумачення існуючих механізмів регіональною правозастосовною практикою, що суттєво зменшує дієвість виданого ордера. Тому послідовне зближення законів країн-учасниць Євросоюзу і конструювання уніфікованих стандартів є гарантіями того, що такий інструмент, як європейський ордер може бути ефективно реалізований у сфері протидії широкому спектру проявів транскордонної злочинності єдиною та цілісною правоохоронною системою наднаціонального об'єднання.

Ключові слова: екстрадиція, правоохоронна діяльність, європейський ордер на арешт, інтеграція, імплементація, Європейський Союз.

Statement of the problem. Incessant processes of globalization, internationalization of crime and problems in the activities of law enforcement structures of the countries of the European Community organically determined the objective necessity of transformation of international relations in the system of criminal justice, oriented on active cooperation between member states, which reflects the actual concept of integration in this field of law enforcement. The extradition regime, which was formed on the European continent, has undergone drastic changes over the past half century, connected with the introduction into practice of the international cooperation in the field of criminal justice of a new legal instrument – the European Arrest Warrant (hereinafter – EAW) [16].

Analysis of recent research and publications. First of all, publications by foreign legal scholars: Alegre S., Fuchs H., Jegouzo I., Jimeno-Bulnes M., Keijzer N., Lagodny O., Leaf M., Naert F., Plachta M., Tomuschat C., Van Ballegooij W., Wouters J. are devoted to the study of the peculiarities of the implementation of the proposed alternative. Among domestic scientists, problematic issues on the outlined topics should be highlighted in their works Bench N. V., Ovcharenko O. M., Svyatun O. V., Traskevich M. I., Turchenko O. G. and other well-known lawyers.

In context, let us recall that since January 1, 2004, in relations between the countries of the European Union (hereinafter referred to as the EU), the cumbersome, bureaucratic and ineffective procedures of international search and extradition were replaced by a specific procedural mechanism, the legal basis of which was the Framework Decision of the European Council of June 13, 2002 "About the European Arrest Warrant and the Surrender Procedures Between Member States". Therefore, **the purpose** of the presented **article** is a thorough analysis of the genesis of the institution of the European arrest warrant as an effective means of: (a) implementation of the principle of mutual recognition of court decisions in criminal cases; (b) overcoming a phenomenon that is extremely negative for the overall legal order – transnational crime on the territory of the European Union.

Presenting main material. For a long period of time, the traditional extradition process, which was actively implemented by the EU countries, was based on the provisions of such a fundamental multilateral international legal treaty as the European Convention on the Extradition of Criminals of December 13, 1957 [6]. In turn, its prescriptions were supplemented by another important legal document – the European Convention on Combating Terrorism of January 27, 1977 [5], which immanently allowed to limit the scope of application of the rule on non-extradition of those accused of crimes of a political nature.

At the same time, taking into account the main role of extradition in the combat against international crime, a number of main acts of the European Union (including the statutory documents) pay considerable attention to this legal institution. At the same time, the emphasis was placed on the need to form one's own perfect system of mutual cooperation in matters of transfer of accused or convicted persons to competent criminal jurisdiction.

However, this mechanism should be viewed through the prism of the fundamental goals of the EU, enshrined in Articles 2 and 29 of the Treaty on the Establishment of the European Union or the Treaty on the European Union (*Maastricht Treaty*) of February 7, 1992 and in the Treaty of Amsterdam (*Treaty of Amsterdam*) dated October 2, 1997 (which made significant amendments to the EU Treaty), which are directly related to the formation of the area of freedom, security and justice on the continent (*Europe's Area Freedom, Security and Justice*).

This fundamental approach stipulated the implementation of a whole set of measures in the field of combating crime, including the extradition of offenders. In particular, the Treaty on the European Union in Art. 31 Chapter VI "Regulations on the cooperation of police and judicial authorities in the field of criminal law" regulates – in order to develop cooperation in the field of criminal justice, joint efforts, along with other measures, also include the promotion of cooperation between member states in the implementation of extradition.

In addition, extradition issues were elucidated in the Agreement on the Implementation of the Schengen Convention (i.e. the Convention of June 19, 1990 on the Implementation of the Schengen Agreement of June 14, 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks on common borders, ch. 4 "Issuing (extradition)") [*Convention from 19 June 1990 Applying the Schengen Agreement of 14 June 1985 Between the Governments of the States of the Benelux Economic Union, The Federal Republic of Germany and The French Republic, On The Gradual Abolition of Checks At Their Common Borders (SCIA)*].

In accordance with Part 1 of Art. 59 of the mentioned document, the provisions of the specified chapter supplemented the European Convention on the Extradition of Offenders of 1957 and were applied in relations between the participants (Benelux countries) of the Treaty on Extradition and Mutual Legal Assistance in Criminal Matters of June 27, 1962. It is also established that the specified Part 1 does not prevent the implementation of relevant provisions of current bilateral agreements between the Parties.

Currently, 27 countries have joined the Schengen Agreement (regime), namely, Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland.

However, the most thorough attempts to create a system of extradition within the framework of the Union were connected with the adoption of two legal acts – the Convention on Simplifying the Extradition Procedure of March 10, 1995 and the Convention on Extradition of September 27, 1997, although treaties concluded between EU member states and have not received the number of ratifications necessary for their enforcement. The "fiasco" of these conventions was mainly due to the fact that they, like other popular legal instruments in the field of extradition, were based on some general extradition restrictions (such as: refusal to extradite for crimes of a political nature or committed for political motives, non-extradition of citizens, etc.). We emphasize that an important innovation regarding the possible extradition of country's own citizens could be limited by the law of the participating state that it will refuse the extradition of its citizen or allow extradition subject to certain conditions. Such reservations were made by Austria, Germany, Greece, Luxembourg. The Netherlands, Portugal and Finland have said they will allow the extradition of citizens subject to specific conditions, including if they will serve a custodial sentence in their own country. Ireland's statement provided for the possibility of extradition only on the principle of reciprocity.

At the same time, the regime of exceptions and precautions, which gave the member states the opportunity to apply a discretionary approach, according to which they could at their own discretion decide whether to grant or reject an extradition request, did not correlate either with the goals and objectives of the European Union, or with its policy in the field of combating crime.

Therefore, the adoption by the European Council in Tampere (October 15–16, 1999) of the concept of mutual recognition of court decisions was of fundamental importance for reforming the existing extradition mechanism. According to the conclusions of the Council, in particular, paragraph 35, the official extradition procedure between the member states should be canceled for persons who avoid justice after a final court sentence has been issued against them, and the extradition procedures for persons suspected of committing crimes should be accelerated (this is, first of all, on shortening the established terms).

Accordingly, the European Arrest Warrant (EAW), provided for by the Framework Decision of the European Council "About the European Arrest Warrant and Procedures for the Transfer of Offenders between Member States" dated June 13, 2002 (hereinafter – Framework Decision) [18], is the first concrete measure in the field of criminal law, which implements the principle of mutual recognition, which the European Council called the "cornerstone" of judicial cooperation in criminal cases/proceedings within the EU .This document does not have a direct effect, but only imposes on countries the obligation to take the necessary measures to harmonize domestic legislation with its prescriptions – to transpose the obligations imposed on them (Article 34 of the Framework Decision).

It should be emphasized – "mutual recognition": (1) meant that a court decision issued by the competent authorities of one participating state should, *ipso facto*, be recognized and automatically enforced within the European Union; (2) became one of the most fundamental principles of interaction between states-members of the EU, which changed the traditional ideas of the community about the strategy of international cooperation in criminal justice [1; 13]. However, cooperation in the form of extradition is based on other legal principles.

In the presented perspective, we will consistently note that at first glance, a similar approach (according to which a decision is made in one participating state in accordance with its national legislation is automatically recognized on the territory of another participating state) may raise the question of whether sovereign power is not lost, as an integral attribute, regarding control over the execution of court decisions in the territory of the relevant Party [15]? However, the principle of "mutual recognition" was not completely new to the law enforcement practice of the European Community. Mutual recognition, in particular, is a fundamental basis of law within the European Union: (a) confirmed in the decisions of the EU Court and (b) reflected in the process of harmonization of the legislation of the participating states [22].

Thus, a gradual expansion of the scope of application of the analyzed principle was foreseen by extending its effect to court decisions in criminal cases, which is based on trust in the national judicial systems of the member states of the European Union, respect for the rule of law and the unconditional provision of human rights in the criminal justice process [20; 21]. Let's summarize: the practical consequence of the implementation of the principle of mutual recognition in the field of criminal law was the "free movement" of court decisions issued by the competent judicial bodies of the member states of the European Union.

For the practical implementation of the defined concept, it was considered necessary: (a) determination of priority areas of cooperation between states – in fact, the only effective method of combating cross-border crime is the internationalization of criminal prosecution and the sphere of justice [17, p. 620]; (b) consistent application of specific legal measures covering different stages of criminal justice. In this regard, On November 30, 2000, the European Council adopted the Program of Measures for the Implementation of the Principle of Mutual Recognition of Court Decisions in Criminal Cases (this is stated in Clause 37 of the Tampere Council Conclusions), aimed at solving the issue of mutual execution of arrest warrants.

In addition, the adoption of a relevant legal document abolishing the formal extradition procedure between the members of the Union was foreseen. Such a tool was the Framework Decision of the European Council dated June 13, 2002, the adoption of which introduced into international legal circulation one of the newest forms of cooperation between states in the combat against crime, terminologically designated as "surrender" [7; 12].

According to the content of Art. 1 of the Framework Decision EAW is a court decision issued by a participating state for the purpose of the arrest and transfer by another member state of a requested/wanted person for criminal prosecution or execution of punishment or security measures related to deprivation of liberty (i.e. the application of measures limiting or deprive a person of the right to freedom). First of all, the fact that the EAW is issued in the form of a court decision – an act that refers to the subject of competence of the relevant judicial body of a member state of the European Union, which indicates the judicial and not the administrative nature of the mentioned document, in contrast to the situation with extradition, when the final decision on the issue of extradition is made by the administrative authority.

As evidenced by reviewing the text of the definition of Art. 1 of the Framework Decision, the execution of an arrest warrant involves certain procedural actions for the transfer of two categories of persons: (1) accused persons, who are transferred for the purposes of criminal prosecution; (2) convicts who are transferred to serve sentences in the form of deprivation of liberty or the application of security measures/ precautionary measures. Therefore, the Framework Decision refers to a range of measures related to the restriction of a person's freedom (for example, during detention).

In view of the above, we consider it expedient to place a special emphasis on the English edition of the Framework Decision under study, which uses the phrase *"detention order"* (literally – "to detain under guard"), which creates certain problems for the unambiguous understanding and correct applied application of this definition. However, in French (Article premier: *«Le mandat d'arret europeen est une decision judiciaire emise par un Etat member en vue de l'arrestation et de la remise par un autre Etat member d'une personne recherche pour l'exercice de poursuites penales ou pour l'execution d'une peine ou d'une mesure de suretre privatives de liberte»*) and in German (Artikel 1: *«Beidem Europaischen Haftbefehl handelt es sich um eine justizielle Entscheidung, die in einem Mitgliedstaat ergangen ist und die Festnahme und Ubergrade einer gesuchten Person durcheinen anderen Mitgliedstaat zur Strafverfolgung oder zur Vollstrecckung einer Freiheitsstrafe- oder einer freiheitsentziehenden MaBregel der Sicherung bezweckt»*) versions use such terms as "security measure", "precautionary measure".

A characteristic feature of the definition of an arrest warrant is that it is implemented only in legal relations between the competent judicial authorities of the EU member states, which organically follows from the concept of mutual recognition of court decisions. In all other cases related to the actual transfer of the accused, convicted for criminal prosecution or serving a sentence, the EU countries will use the extradition procedure.

Contextually, we note that one of the most fundamental material and legal problems for the EAW mechanism was the establishment of a list of crimes to which it can be applied. The given catalog of illegal acts forms the legal basis of the Framework Decision. Therefore, the specified criminal offenses can be divided into two categories.

First, according to Part 1 of Art. 2 of the Framework Decision of the EAW may be issued in respect of acts for which the legislation of the issuing Member State provides punishment in the form of deprivation of liberty or the application of a preventive measure for a period of not less than twelve months, or in the case of a conviction deprivation of liberty or the selection of a preventive measure (in particular, detention) not less than four months.

Thus, for the application of the EAW mechanism, there is no condition under which the act must be considered a crime under the laws of both states, and this is one of the most important differences between the transfer of persons under the EAW procedure and extradition. Therefore, both the criminality of the act subject to the EAW and the limits of its punishment are subject to assessment only from the point of view of the legislation of the state that issued the warrant. Judicial standard, fixed in Part 1 Art. 2 for enforcement EAW, can be compared with it analogues standard of extradition including measures of punishment, provided for by the definite crime. Though, the most significant demand a to the mutual/double criminalization of actions for the State which enforces the warrant lost its power (*double criminality or principle of double criminal liability*) [9].

Secondly, according to Part 2 of Art. 2 of the Framework Decision, the transfer of a person in accordance with the EAW is carried out without establishing whether a certain act satisfies the double obligation for criminal offenses punishable by imprisonment or a security measure (preventive measure) for a period of at least three years under the law of a member state, which passes the verdict [8; 24]. Among the listed acts, crimes falling under the jurisdiction of the International Criminal Court (hereinafter referred to as the ICC or the Court) are separately mentioned. This judicial body was founded at the Rome Diplomatic Conference in 1998, its Statute entered into force on July 1, 2002. According to Part 1 of Art. 5 of the Rome Statute of the ICC, the Court has jurisdiction over the following acts: (a) the crime of genocide; (b) crimes against humanity; (c) war crimes; (d) crime of aggression [19].

The inclusion in the text of the Framework Decision of the provisions on the application of the above-mentioned rule in relation to these categories of crimes is fully consistent with the main functional purpose – the additionality of the named international judicial institution and the obligation of states (which are members of the European Union and participants of the ICC) to transfer the accused/convicted to the Court, if the case is recognized as acceptable for consideration, as well as with the concept of EAW.

Thinking of the need for the formation of the necessary implementing legislation, one can find examples of this kind of implementation in all EU countries, and their experience differs in each specific case, covering both the introduction of corrective changes and additions to the relevant codes, the adoption of separate laws regulating the entire complex

of implementation problems, as well as the adoption of new codes. The creation of legislation that implements the norms of the Rome Statute, makes it possible to ensure compliance with the rule of "double obligation" in relation to crimes falling under the jurisdiction of the ICC, because the scope of application of the extradition procedure is significantly expanded, since it does not face the legal obstacles that are inevitably characteristic of the process of extradition of accused or convicted persons (in particular, long terms of execution of requests and the complexity of the referral algorithm, the multiplicity of bodies involved in the mechanism, the use of diplomatic communication channels).

At the same time, the list of crimes for which a simplified transfer procedure is implemented without the application of "double obligation" is not exhaustive and may be in accordance with Part 3 of Art. 2 is supplemented by other types of criminal offenses. We emphasize that the Framework Decision, in contrast to multilateral and bilateral extradition treaties, provides for a limited list of grounds that allow the executive judicial body of a participating state to refuse the transfer of an accused or convicted person.

It should be noted that these grounds are divided into mandatory and optional. A similar classification of grounds for refusal to comply with the relevant request is also determined by the UN Model Treaty on Extradition, adopted by Resolution 45/116 of the General Assembly of December 14, 1990.

As for optional grounds, their use involves research and assessment of appropriate circumstances with the following alternative: execute an arrest warrant or refuse to execute it (that is, the issue is decided based on the discretion of the executive body of the state).

The register of optional grounds, establishing the presence of which allows to refuse the execution of the EAW, established in Art. 4 of the Framework Decision. Thus, according to part 6 of this article, the executing judicial body can refuse to implement it, if the warrant was issued for the purpose of executing a punishment in the form of deprivation of liberty or applying a specified security measure/preventive measure (for example, detention) against a person, who is or resides in the territory of the executing member state, or is a citizen or resident thereof, and that state undertakes to execute the sentence or decision on a security measure/preventive measure in accordance with national law.

The overall assessment of Articles 3 and 4 of the Framework Decision allows for a significant narrowing of the range of grounds for refusing to perform the EAW. Granting the member states significant discretionary powers so that they decide at their own discretion the issue of the implementation of the EAW, could significantly reduce the scope of application of the Framework Decision and affect the effectiveness of new legal mechanisms for the transfer of persons within the European Union. Meanwhile, the stated goal in connection with the introduction of the EAW was to achieve a qualitative replacement of complex legal extradition procedures with a simplified and operational algorithm for the transfer of persons, based on the direction of the principle of mutual recognition of court decisions issued by the participating state.

Therefore, the exclusion of the usual extradition grounds for refusal to extradite a person from the scope of application of the EAW was aimed at achieving this goal. In particular, this concerns the refusal of extradition for the commission of a crime of a political nature and non-extradition of country's own citizens. The outlined vector is adopted by many international legal acts regulating the extradition mechanism, in particular, the European Convention on the Extradition of Offenders (Article 3 "Political Offenses") [6], the Convention on Extradition (paragraph "e" of Article 3) [10]. Currently, the implementation of this guideline is facilitated by differences in the approaches of states when defining the concept of "political offense", conflict in domestic legislation regarding the criminalization of certain socially dangerous acts. The described situation will have a potential negative consequence of violating the constitutional rights and freedoms of the accused and convicted. Similar cases have been repeatedly observed in Western European legal practice.

The extreme concern of the countries of the European Union about the existence of global threats, the state of combating international crime, primarily terrorism, was clearly manifested in the process of adopting the 1996 Convention on Extradition, which, unlike other thematic international treaties, narrowed the scope of the concept of "exclusion of political crimes" and did not allow member states to refuse extradition solely on the grounds that the extradition act is a crime of a political nature, related to a political crime, or committed for political reasons (Article 5). Thus, the stated problems of "political crime" and the rules of "double obligation" are not an obstacle to the execution of the European warrant.

Another important innovation of the Convention was Art. 7 ("Extradition of citizens"), according to which extradition could not be refused, based on the fact that the wanted person is a citizen of the requested state [23].

Thus, significant modifications took place in the segment of regulating the legal responsibility of country's own citizens. According to the Framework Decision, the very citizenship of the requested state is not considered as a mandatory basis for refusing to execute a warrant, as is the case in extradition procedures for citizens of a certain country. If an arrest warrant has been issued against a national citizen of the executing Member State, enforcement may be refused only when the requested party undertakes to comply with the sentence/punishment imposed or the decision to impose a preventive measure in accordance with national law. Otherwise, country's own citizens are subject to transfer in accordance with the European warrant (Part 6, Article 4).

At the same time, one cannot overlook the fact that the departure from the principle of non-extradition of citizens, characteristic of extradition practice, is accompanied by relevant guarantees for this category of persons. In particular, according to Part 3 of Art. 5 of the Framework Decision, if, for the purposes of criminal prosecution, an EAW is issued against a person who is a citizen or permanently resides in the territory of the executing member state, the transfer of such a person may be carried out on the condition that, after consideration of the case, he returned to the jurisdiction of the executing Member State to serve a sentence of imprisonment or a decision to apply a preventive measure to him, which is determined by the State that issued the warrant.

For example, if the competent judicial body of Italy, which has received an EAW issued by France in relation to its own citizen, can allow the transfer, then the overturned sentence will be executed on the territory of Italy (first of all, in order to optimize the process of his resocialization). Although the mentioned order was aimed at mitigating possible problems related to national legal provisions on non-extradition of citizens, some EU countries decided to first settle the problems of a constitutional nature, as evidenced by the regulatory development observed recently in Western European countries (for example, thanks to the constitutional reform, the German government solved the most important task – removed legal restrictions on the extradition of Germans to the countries of the European Union, significantly facilitating the further application of an arrest warrant).

From the constitutional amendments, it can be concluded that the prohibition of extradition of citizens is not absolute. At the same time, the fact that the exception does not apply to all states, but only to members of the European Union, cannot fail to attract attention. When evaluating this innovation, one should take into account the specific nature of such an association as the European Union, which implies the presence of its citizenship. As stated in the Proposal for a draft Framework Decision submitted by the European Commission

(*Commission of the European Communities*), "a European arrest warrant will take attention to the principle of citizenship of the Union. The exception that is made for citizens (it is about the refusal of extradition by virtue of citizenship) will no longer apply. The main criterion is not citizenship, but the main place of a person's location/residence, in particular, in relation to the execution of the sentence" [3].

Thus, the transfer of persons within the European Union is a procedure used in the mechanism of combating cross-border crime within the framework of a single state-legal association, which, at the same time, does not negate the general approach to refusal to extradite country's own citizens, which is characteristic of relations between states-participants with other countries. The rule on the transfer of its citizens in accordance with the EAW is valid only in relations between the member states of the Union. Thus, according to the content of Part 2 of Art. 25 of the Constitution of Ukraine, a citizen of our country cannot be expelled from the borders of Ukraine or extradited to another state [11]. Today, Ukraine has clearly expressed its desire for European integration and EU membership. Therefore, the application of the EAW on the territory of our country will become possible only in the case of consolidation and amendments to the legislative acts (the Basic Law and the Code of Criminal Procedure of Ukraine), thereby ensuring proper regulatory regulation of this institute [14, p. 170].

Despite the fact that the Framework Decision does not provide for the factor of the presence of one's own citizenship as a reason for refusing the transfer of a wanted person and there have been constitutional innovations that allow the transfer of citizens to the jurisdiction of another EU member state, the solution to the problem of the transfer of the analysed category of persons turned out to be not so simple, as it might seem at first glance.

Even taking into account the provisions of the Framework Decision and constitutional norms with certain corrections, it is considered necessary to have an appropriate regulatory toolkit, which is the implementing legislation of the member state. Moreover, the latter should be in close correlation with legal guarantees of citizens' rights, which are provided in accordance with domestic law. For example, the domestic legislation of Germany from 2004, which implements the Framework Decision, violates the norms of the Constitution, in particular, Part 2 of Art. 16, which prohibits the extradition of one's own citizens. Thus, from the position of the Federal Constitutional Court of Germany, the law on EAW violates sentence 1 of Part 2 of Art. 16 of the Constitution, which establishes prohibition on the extradition of a citizen, as it does not meet the condition of legality provided for in sentence 2 of the same part. Therefore, the fundamental right to prohibit the extradition of Germans may be limited with some reservations, which are referred to in Part 2 of Art. 16.

The cited act imposes disproportionate restrictions on the right to protection against extradition due to the fact that the legislator did not exhaust the opportunities provided to him by the Framework Decision in such a way that its implementation for the purposes of incorporation into national legislation showed maximum attention to the basic rights and freedoms of the citizen. It is for this reason that the extradition of German citizens is not possible until the legislator adopts a new act implementing sentence 2, Part 2 of Article 16 of the Basic Law [4; 2, p. 538].

In evaluating the decision of the Federal Constitutional Court/Tribunal of Germany of July 18, 2005 on the EAW, it should be noted, for the sake of fairness, that: (a) only the domestic law implementing the Framework Decision was invalidated, not the provisions of the latter; (b) the settlement of the outlined problem is not associated with the refusal to fulfill obligations regarding the application of the EAW institute.

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

At the same time, as T. O. Pshevlotska rightly points out, the issue of overcoming the differences caused by the EAW, harmonizing only a separate segment of criminal proceedings, leaving the rest of the procedure in the competence of national systems, is extremely difficult. It is absolutely obvious that the EAW alone will not be able to eliminate a wide range of modern threats. According to the researcher, it is necessary to develop a general concept of harmonization of thematically oriented domestic legislation, because the introduction of only certain means leads to the problem of interpretation of existing mechanisms domestic law enforcement practice. The specified circumstances significantly reduce the effectiveness of the EAW. Therefore, the gradual convergence of the legislation of the member states of the European Union and the construction of unified standards is a guarantee that such a tool as a European warrant can be effectively implemented in the fight against international crime [17, p. 626]. Immanently, the success of a large-scale counteraction to its various manifestations will ensure the inclusion of the world's states in the global law enforcement system.

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