

Resumé

The European Arrest Warrant

The aim of my diploma thesis is to analyze the Framework Decision of 13 of June on the European Arrest Warrant and the surrender procedures between Member States (2002/584/JHA), next as "FWD", and how it has contributed to the creation of new simplified and more effective system of extradition of criminals among the Member States of the European Union. The historical development of international judicial cooperation in criminal matters and the extradition procedure will be discussed first in order to understand the need for a new solution for handling with the new forms of organised cross boarder crime in the European Union that were brought by the introduction of the principle of free movement of persons and the abolition of boarder checks after the Schengen Agreement. This will lead us to the critical analysis of fundamental principles on which the European Arrest warrant is based, its practical application by the judicial authorities in different Member States and core problematic issues that the daily practise of surrender procedure is nowadays facing. The possible solutions for such questions will be presented, not only on the state but also on the Union level. A part of my research is also devoted to the transposition of the FWD into the Czech legal order and decisions of constitutional courts in selected Member States regarding such issue.

The thesis is composed of nine chapters. Chapters one and two are of an introductory character and describe the historical consequences of judicial cooperation in criminal issues in Europe and the precedent rigid extradition procedure. Chapter two is divided into five subchapters, the last of them is further divided into five parts dealing with the development of judicial cooperation in Europe until the adoption of the FWD.

Chapter three examines the legal nature of framework decisions as legal instruments under the former third pillar and its indirect effect declared by the Court of Justice of the European Union in case *Maria Pupino*. The relation between the

framework decisions and international treaties is further discussed at the end of the chapter.

Chapter four as one of the major parts of my research analyzes the FWD itself. It is subdivided into three major sections. The first section focuses on the definition of the European Arrest Warrant as a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. The second section examines the conditions of the application of the European Arrest Warrant, particularly the controversial principle of abolition of dual criminality requirement regarding the FWD list of 32 offences, principle of speciality and grounds for mandatory and optional non-execution of the European Arrest Warrant. Further analysis of recent case law of the Court of Justice of the European Union regarding the application of the European Arrest Warrant is also included in the chapter. The last section concentrates on the surrender procedure according to the provisions of the FWD.

Furthermore, chapter five introduces the topic of transposition of the FWD into Czech legal order and the problematic aspects of it that led to a scrutiny of the transposing provisions before the Czech Constitutional Court. Next chapter focuses on domestic implementing legislation and surrender procedure to the Czech Republic and from the Czech Republic.

Parts seven and eight of my work are composed as critical analysis of the selected decisions of constitutional courts throughout Europe that dealt with constitutionality of legislation implementing the FWD into national legal orders. The most controversial issues that were subject of the selected cases are limitation of the double criminality requirement and also the surrender of executing state's own nationals. Both of those concerns were directly challenged before the Czech Constitutional Court which eventually rejected a proposal for cancellation of the implementing legislation. The last chapter introduces the evaluation report on the application of the European Arrest warrant in the Czech Republic and legislative changes that should be considered on the Union and also on Czech national level.

Although the European Arrest Warrant is being considered as one of the most controversial legal instruments of the last decade its outcomes according to the various evaluation reports are positive and it seems to be working effectively. The main goal of my research was not to address the abolishment of the European Arrest Warrant or to act in its favour. The approach that I present is to remedy the negative aspects so it could create the well-developed area of freedom, security and justice in the European Union.