

INTERNATIONAL SEARCH AND EXTRADITION OF FUGITIVES

Sasho M. STOJANOVSKI, M.A.*
Biljana STEFANOVA*

*Ministry of Interior of the Republic of Macedonia,
smstojanovski@yahoo.com

Abstract: *Modern crime with all its singularities, growth dynamics, scope, structure, new and more severe manner of execution, certainly represents an increased threat to the vital interests of the individual, community and safety. Crime is no longer a problem only for one country or region, it becomes global. Crime and criminals are no longer territorial or geographically limited within certain countries, it's transnational.*

Using the benefits of opening the previously closed borders and the abolition of border controls, development of information and communication technology, transportation, transcontinental mobility, changes in social, political and economic systems in the world, crime and criminals often rapidly change place of residence after committing the crime.

Having in mind the above mentioned, dealing with crime and its perpetrators requires modern and serious approach and cooperation of international enforcement of laws and appropriate and effective instruments for searching, locating the perpetrators of crimes, arrest and their extradition.

The paper will analyze existing instruments that are used from the bodies of criminal law enforcement to determine their advantages and disadvantages in practical application, and duration of proceedings in terms of simplification, faster and effective implementation. We think that this way it will give its contribution to overcoming the problems that are caused by perpetrators of particular crimes especially fugitives from the law.

Keywords: *international search, Red notice, European arrest warrant, fugitives, extradition*

1. Introductory remarks

Fugitives¹ are persons who have not respected the judicial system, constantly mobile, often finance its escape with further criminal activities, which could cause the initiation of criminal proceedings in more than one state. Although they are stigmatized and may be prosecuted for breaking the law, they are still free is not deprived of liberty for sanctions².

Using the benefits of the technical and technological development of the means of transport and communication, criminals can reside and plan criminal activities in one state, commit the crime in another, and sell the stolen items in multiple states.

Their location, search and arrest are priority task for the criminal-legal bodies on national and also on international level.

Fugitives who are trying to escape by crossing the borders should be searched, deprived of their freedom and handed over to the enforcement of criminal proceedings or enforcement of the criminal sanction. They are movable, their criminal activities do not stop, and even they are aware that because of it they could face criminal charges in more than one country. As a result of their criminal activity, fugitives are threat to public safety in each country.

The process of searching and arresting criminals means completing the pretrial and criminal procedure, that contributes to the successful implementation of further judicial or other proceedings for the successful fight against crime in general.

The search is an important part of the operational activities and presents a systematic collection of notifications for the object of pursuit by activating operational and tactical measures or activities for their retrieval, and thus ensuring their availability.

¹A fugitive is a person who escapes from legal custody, serving a sentence or prosecution and it's a subject of arrest warrant.

²When fugitives are not arrested, cases are open, the wanted criminals cannot face the justice for the committed crime and for the victims of committed crime justice is not satisfied.

The main reason for starting a search is the unavailability of wanted person who avoid criminal responsibility for the offense in order not to be found and arrest by the bodies of criminal law enforcement.

The search for people emerges as the most common form of search. According to the contents of operational-tactical and technical measure search can be run in the form of: warrant, circular and announcement. A warrant is a form of a search act which initiates the start of a search. According to the regulations it is issued by the Court, the Public Prosecutor or the director of the prison in a written form.

According to the territory of which the search takes place and according to knowledge which come with pre-measures and prospecting activities the search can be: local, national and international.

International searches as a process and activity are conducted through the Criminal Police Organization - Interpol worldwide through SIRENE bureaus and Schengen Information System - SIS in the European Union.

2. INTERPOL

The establishment of the International Criminal Police Commission known as Interpol is actually a continuation of the efforts of the international community to establish an international police organization for cooperation and is considered the first step in organized police cooperation against transnational crime. The Commission has become perhaps the largest³ international organization of law enforcement multilateral membership; although in the beginning it was predominantly a European organization.

The motto of the organization "For a safer world" indicates that Interpol provides a contribution in the field of police cooperation in preventing and detecting crime and its perpetrators and contributes to increased security at an international level.

³ 190 member countries.

Guided on the four basic tenets⁴ Interpol provides high-tech infrastructure of technical and operational support to police all over the world to meet the growing challenges of crime in the 21st century.

The actions taken by Interpol are in accordance with existing laws of Member States in the spirit of " World Declaration on Human Rights"⁵. According to the Interpol Constitution any intervention or activities that have political, military, religious or racial character⁶ is prohibited. Interpol singles out six priority areas⁷ of action. Performs its activities through the national central offices located in each Member State on the principle 24/7.

Locating the fugitives, their search and arrest are part of the basic priorities of Interpol and one of the most important fields of activity globally in NCB-s.

The activities of Interpol in searching international fugitives are priority since the inception of the organization. For this purpose within Interpol a special unit⁸ for search is established that allows active and systematic support of Member States.

Through Interpol, at the request of Member States, circulate electronically search-announces⁹ that contain identification and judicial data on individuals subject of search. Through the channels of Interpol circulate seven types¹⁰ of notices that can be distinguished by

⁴ Secure global police communication services; Operational data services and databases for police; Operational police support services; Police training and development.

⁵ The Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly (10 December 1948 at Palais de Chaillot, Paris).

⁶ Interpol Constitution - Article 3.

⁷Public security and terrorism, Trafficking in human beings, Drug Trafficking and criminal organization, Financial and computer crime, Fugitives and Corruption.

⁸FIS - Fugitive investigation service.

⁹2008 (52367); 2009 (54123); 2009 (91570).

¹⁰Red Notice - To seek the arrest or provisional arrest of wanted persons with a view to extradition; Blue Notice - To locate, identify or obtain information on a person of interest in a criminal investigation; Green Notice- To warn about a person's criminal activities if that person is considered to be a possible threat to public safety; Yellow notice - To help locate missing persons, often minors, or to help identify persons who are unable to identify themselves; Black Notice- To seek information on unidentified bodies; Orange Notice - To

the purpose which also can determine the color indicated in the upper right corner.

2.1. Red Notice

The red notice is the first and oldest instrument available to police authorities in dealing with offenders, especially those who are subject to search. The form of warrant contains several parts¹¹ which basically makes it for unified use. This instrument is worldwide recognized by Member States as a legal basis for provisional arrest and extradition custody.

Depending on which stage is the criminal procedure, there are two types of red notices: - red notice for search of persons subject of criminal proceedings¹² and - red notice for persons subject of search for serving an imprisonment sentence¹³.

The ground for announcing a red notice¹⁴ is the existence of a court order for arrest of the person. With its announcement through Interpol channels it is valid, active and available for 190 countries. This means that person subject of international arrest warrant with a view to extradition to Member countries become subject of national search and in case of locating them; they will be deprived of their liberty with a view of extradition to the country which issued the warrant.

Despite these advantages, the use of red notice has certain drawbacks, because not all countries accept it directly as a basis for determining extradition custody. Namely, a number of countries in

warn of an event, a person, an object or a process representing an imminent threat and danger to persons or property; Purple Notice - To provide information on modus operandi, objects, devices and concealment methods used by criminals; INTERPOL–United Nations Security Council Special Notice - Issued for individuals and entities that are subject to UN sanctions.

¹¹ 1- part personal particulars of the wanted person; 2 – part judicial particulars; 3 – part, particulars for the country who issued an arrest warrant.

¹²Minimum provided sentence of 12 months.

¹³Minimum four months imprisonment.

¹⁴2008 (16465); 2009 (20581); 2010 (19349).

dealing with the red notice take into account certain additional conditions¹⁵ in determining the measure extradition custody¹⁶.

2.2. Extradition

International search for people or arrest and detention with a view to extradition is considered as the oldest instrument and the founder of the international police and judicial cooperation. According to written documents it dates back to 1280 BC when the first extradition¹⁷ was performed.

The extradition is a process in which an accused or convicted person is brought in accompaniment in their home country for trial or execution of sentence. Having in mind the fact that crime is turning more international, the extradition presents a more important instrument of international cooperation. The practical realization of the process of extradition indicates the existence of numerous barriers for full and effective practice of extradition¹⁸

For a long time, there were no provisions or international agreements on the conditions for extradition or procedure that should be followed. Extradition was applied in rare cases, when the case had international dimensions or when requesting states and states from which the extradition was requested had to be ready for cooperation. In practice, extradition rarely was asked and rarely sanctioned and pursued.

The extradition in the world is governed by hundreds of bilateral agreements, which are practiced since 1800. Agreements on

¹⁵Whether the wanted person has temporary address in the country where he was arrested, whether he temporary works there, which is his marital and familiar status in the country where he was arrested, etc.

¹⁶In the past two years in Republic of Macedonia there are three cases in which instead of pre-extradition custody in prison a decision of pre-extradition custody in Hotel was brought.

¹⁷Treaty between Rameses II from Egypt and prince of „Hittite,, Hattushilish III.

¹⁸Long time period in which extradition should be done, existing of different national laws and systems, ideological differences between countries, traditional asyl politics dual citizenship etc.

extradition between states were considered as contracts between sovereign and equal states. According to this approach, other members, states increasingly refused to provide full cooperation to countries that did not share the same democratic values (the state is not democratic or because their legal system does not provide enough protection for the accused)¹⁹.

Among the general conditions for extradition, are included requirements for dual criminality, refusal of extradition of its citizens, except for political offenses.

Most extradition treaties require the acts to be criminal to both the states, one which requires and the other from which extradition is requested. Even when a state allows extradition in the absence of an extradition treaty, generally the principle of dual criminality is applied. The basic rule requires that the acts must be criminal in both countries. States normally extradite persons to a country which demanded the extradition of nationals from a third country. When it comes to extradite its own nationals, most states traditionally claim that such extradition is not possible, including such prohibitions in their constitutions. The explanation for this attitude is a mixture of the obligation of the state to protect its citizens, lack of confidence in the fairness of legal proceedings by a foreign country, the disadvantages faced by defendants when they defend themselves in a foreign legal system, as well as disadvantages in connection with serving detention in a foreign country²⁰.

The analysis of realized extraditions suggests that the overall duration of extradition process takes a long time. Namely, following the deprivation of liberty of a person, the overall procedure for extradition may take several months that leads to the question: "What would happen if a person deprived of liberty passes more time in

¹⁹P. Gali Hart, "Loosing of time in formal and procedural requests in international cooperation", in vol. *Principles and Procedures for a new transnational criminal law: Documentation of an international workshop*, 1992.

²⁰E.A. Nedelman, *Cops across borders: The internationalization of U.S. criminal law enforcement*, Pennsylvania state University Press, 1993.

extradition custody than the amount of the imposed sanction or penalty which may be imposed for the committed act?”.

3. Schengen Cooperation

The Benelux countries, with Germany and France in Luxembourg signed the Schengen Agreement²¹ on the gradual abolition of controls at their common borders. The Convention on implementation the Schengen Agreement of 1985, was signed five years later and entered into force in 1995.

The Schengen zone now covers 26 countries with an area greater than four million square kilometers with more than 500 million inhabitants (Bulgaria and Romania are EU members but not members of SIS and SIRENE).

The Schengen zone is an area without internal border controls and EU citizens enjoy the right to move freely within its framework. The complete abolition of internal borders includes enhanced and effective cooperation between police, customs, external border control and judicial authorities of all Member states. Schengen cooperation should contribute to protecting people and property by reducing opportunities that this right can be abused.

The Schengen cooperation facilitates internal border controls between member states, allowing free movement of people, on one side, which requires establishing counter measures in order to assist Member States in the fight against illegal migration, on the other side. These measures have opened new routes for cross-border cooperation between law enforcement agencies. To achieve this goal a balance was made between the need for rapid response to crime and respect for national sovereignty²².

²¹ The Schengen Agreement signed on 14 June 1985.

²² In order to see more about the importance of the principle of national sovereignty within the European Union, see: Diana-Ionela Ancheș, “Principiul Subsidiarității – Principiu de Drept”, in Vol. Flore Pop, Sergiu Gherghina (eds.), *Uniunea Europeană după 50 de ani. Între Entuziasmul extinderii și aprofundarea integrării*, Argonaut, Cluj-Napoca, 2007, pp. 59-77; *Idem*, “Principiul Subsidiarității în Dreptul European”, in Vol. Flore Pop, Sergiu Gherghina

3.1 SIRENE

SIRENE "Supplementary Information Request at the National Entry", are the single point of contact for all national authorities for law enforcement involved in the Schengen Information System - SIS, and police cooperation in Schengen area. They serve for processing data in the Schengen Information System, their implementation and are the basis for cross-border police cooperation regarding the Schengen convention

SIRENE bureaus are operating on the principle of 24/7 and exchange data important for police and judicial cooperation, search databases, provide international police cooperation and mutual legal assistance; helps judicial authorities in connection with cases of extradition / surrender, organizes training courses, coordinates and participates in cross-border operations from a high level within the Schengen zone, etc..

The activities of SIRENE on judicial cooperation in criminal matters refer to the European arrest warrant which circulates through the SIS and national SIRENE Bureau is responsible for its implementation.

3.2 Schengen Information Systems

The treats that Europe faced caused the necessity of creating a common information system of the signatory countries - Schengen Information System (SIS). The system is one of the compensating measures (common visa policy, improved police and judicial cooperation, etc.). This system is an innovator in police cooperation from a legal standpoint and is of technical character. Before a Member State has the right to access data, it must provide a European team to assess that the necessary safeguards are in order and the existence of the Law on protection of personal data.

(eds.), *Provocarea Europeană. Proceduri și implicații ale aderării României*, Argonaut, Cluj-Napoca, 2007, pp. 49-67.

Schengen Information System is the most common database, which contains about 32 million data entered by the member states of Schengen, for the purposes of public security, police support and judicial cooperation and management control of external borders.

Schengen Information System is established as one of the most important measures for achieving goals - the abolition of internal border controls and free movement within the Schengen zone through: border control, prevention and prosecution of criminal acts, issuing visas and residence permits.

The system provides an opportunity to exchange information about people that are not allowed to enter or stay on Schengen territory or are wanted to arrest or surrender (extradition). As a most mutual base, SIS is consisted of national Schengen system (N.SIS) in each Schengen Member State and the central Schengen system (C.SIS). All national systems are connected "on-line" with a central system through a secured communication network. Using SIS helps in the fight against serious and organized crime.

3.3 European Arrest Warrant

The existence of 27 different legal systems; removal of internal borders and reduced border controls, long and uncertain international legal assistance, difficulties in information exchange, inefficient police cooperation at all levels especially in cases where the criminal was discovered and arrested, long extradition procedure, transfer of information and evidence from one country to another requested a lot of time and increased number of each submitted requests for the extradition of suspects and convicted persons within the EU, are problems that were not possible to resolve within the existing legal systems.

In order to improve cooperation between EU countries and to overcome some problems, especially for dealing with transnational crime, corruption, drug trafficking, terrorism and their perpetrators within the Union are introduced several instruments and several

institutions are established. This mostly concerns the establishment of Eurojust, European Judicial Network, Europol and SIRENE.

To overcome the practical noted disadvantages of the procedure for extradition, especially in view of the same duration in the Union with the Framework Decision²³, the Council of Europe introduced a European arrest warrant which is changing the way of extradition of people with their handing over between the competent judicial authorities. The Decision²⁴ provides innovations in procedure for handing over and abolishes some problems that arise during the proceedings for extradition.

The order is the basis for direct judicial cooperation and direct contacts between the member states. The principle of mutual recognition of judicial decisions represent the basis for its establishing, which means automatic recognition and enforcement of judicial decision by a court in one country and enforceable in another Member State. The handover of persons is made between competent judicial authorities with the assistance of police services. Disabled or reduced is the role of higher judicial instances that previously had an impact on making the final decision on extradition.

The execution of the warrant the fastest and the easiest, means faster and simpler procedure for transfer of persons, without political interference and without problems with dual citizenship and dual criminality.

The speed of the procedure²⁵ is the main feature of the order and includes the achievement of clear deadlines in which decisions should be established. If the person gives consent for handover the decision is established within 10 days of the consent, while in other cases, the decision for transfer should be made within 60 days from the

²³ Council Framework Decision (2002/584/JHA), of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

²⁴The idea of replacing extradition with surrender of persons within the EU originates from the meeting of the EU Council in Tampere, 1999.

²⁵Report of the European Commission COM (2011) 175 final, from 11.4.2011, Brussels, the surrender procedure for the period 2005-2009 takes an average of 48 days.

arrest. The deadline to handover, in case of justified reasons, may be extended for 30 days.

The Warrant contains the requirements for arrest and extradition, which in the past represented two separate instruments, i.e. proceedings²⁶. The warrant pays special attention to the measures to protect personal data and the fulfillment of conditions that should be the basis of the requested person to be deprived of liberty or be determined to detention.

The question "what will happen when a crime is established in one member state, and the same in the other state does not have such status?" – That leads to a condition in which the requested person may reside on the territory of that state without sanction. To overcome this situation, a list of 32 offenses²⁷ is provided, for offences that can be punishable by imprisonment or a security measure over three years and that the execution of the warrant is required. In such cases the principle of dual criminality is not valid, and the execution of the warrant is required. The list of crimes is not final and may be supplemented by other acts in the proper procedure.

²⁶Request for arrest pending extradition and request for extradition.

²⁷ Article 2 Para. 2 of Council Framework Decision (2002/584/JHA), participation in a criminal organization, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, munitions and explosives, corruption, fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests, laundering of the proceeds of crime, counterfeiting currency, including of the euro, computer-related crime, environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties, facilitation of unauthorized entry and residence, murder, grievous bodily injury, illicit trade in human organs and issue, kidnapping, illegal restraint and hostage-taking, racism and xenophobia, organized or armed robbery, illicit trafficking in cultural goods, including antiques and works of art, swindling, racketeering and extortion, counterfeiting and piracy of products, forgery of administrative documents and trafficking therein, forgery of means of payment, illicit trafficking in hormonal substances and other growth promoters, illicit trafficking in nuclear or radioactive materials, trafficking in stolen vehicles, rape, arson, crimes within the jurisdiction of the International Criminal Court, unlawful seizure of aircraft/ships, sabotage.

In the beginning, the process of harmonization of national legislation, particularly the problem with handing over their nationals for a number of members²⁸, was unrolling with problems.

The European arrest warrant includes changes compared with extradition conducted by Interpol and is still used among the members of Interpol, which are not members of the European Union. However it should be noted that in cases where the extradition of a person to and from EU member state against a non-EU member state, requirements are applicable prescribed by the Conventions or bilateral agreements.

In this way, according to the author, are avoided undesirable consequences of the opportunity to hand down sentences of less than four months, which in turn is one of the conditions for activating the international search and extradition

As a negative side of the EAW is considered his limited use (only within the Union), which makes the Warrant inefficient worldwide. For this purpose, remains the use of red warrant, as the only instrument available to all Interpol member countries, including EU Member States.

4. Conclusion

Finding a single document that would be accepted and applied globally would be an ideal solution. We should be aware that the advent of the ideal solution would be accompanied by a series of difficulties, having in mind the different national legislation, issues of citizenship, the problems of dual criminality, political influences, etc.

However, the practice shows that these problems are unmatched. They can not be exceeded for a short time. The harmonization of national legislation, addressing the problem of dual

²⁸Germany, Portugal, Slovakia and Slovenia now have changed their constitutions in order to meet the provisions of the Decision, and 14 countries out of 25 member states in their constitutions banned or limit the release of their nationals. Z. Deen-Racsmany, "Lessons of the European Arrest Warrant for Domestic Implementation of the Obligation to Surrender Nationals to the International Criminal Court", *Leiden Journal of International Law*, 20, 2007.

citizenship, dual criminality, reduction of political influence, are mostly resolved at EU level, which represents proof that every problem has a solution. It only takes an incentive and initiative.

This paper shall be the initial burst of further discussion and elaboration of the subject in order to discover the ideal solutions that will successfully resist the growing crime and its perpetrators, especially fugitives.

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