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# REFLECTION ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION IN CRIMINAL MATTERS, DEMONSTRATED ON THE IMPLEMENTATION OF THE EUROPEAN ARREST WARRANT IN THE EU MEMBER STATES

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**Abstract in original language:**
This paper will focus on the possible problems with the application of the principle of mutual recognition in criminal matters, as demonstrated on the problems encountered while implementing the European Arrest Warrant (EAW), as the most well-known, ambitious and striking instrument, giving effect to the principle of mutual recognition in the EU. First and foremost the position of the three constitutional courts (in the Czech Republic, Poland and Germany) adjudicating on the constitutionality of the national legislation implementing the EAW will be examined. The ECJ judgement on the validity of the EAW framework decision will then be also briefly remembered. Finally, looking at the Commission report on the implementation of the EAW, great advantages and successes of the EAW will be stressed. However, at the same time some shortcomings in the implementation of the EAW will be mentioned as well. In this respect, some practical instances of problems will be also emphasized, particularly from the perspective of the protection of fundamental rights, proportionality and legal certainty, in order to come to the conclusion that although the instrument of the EAW itself contributed a lot to the more effective and speedy judicial cooperation in criminal matters in the matter at stake (surrendering persons within the EU for criminal prosecution and/or serving imprisonment), it shall not be implemented mechanically by the competent judicial authorities, but due account should be rather taken to the proportionality, while protecting the fundamental rights and freedoms, especially where other competing instruments to bring criminals to justice may be at disposal and the genuine mutual trust, based on common standards (both in procedural and substantive criminal law) between the EU member states, is still largely missing.

**Key words in original language:**
European arrest warrant, free movement of persons, extradition/surrender of nationals, double criminality, implementation, proportionality, fundamental rights´ observance

## **1.** INTRODUCTION

The Tampere European Council in 1999 recognized the principle of mutual recognition as the cornerstone of judicial cooperation both in civil and criminal matters. The idea of mutual recognition stemming from the well-known Cassis de Dijon judgement of the ECJ should therefore extend beyond the area of free movement of goods etc. and stretch itself to the area of free movement of judicial decisions (particularly judgements) within the area of freedom, security and justice.[1] In criminal matters, the Tampere European Council urged member states

[1] See elaborated thesis on this subject in the field of criminal cooperation within the EU: Peers, S.: Mutual recognition and criminal law in the European Union: Has the Council got it wrong? Common Market Law Review, 2004, č. 41, s. 5 – 36.

(amongst others) to abolish formal extradition procedures and replace them by simple transfer of the persons fleeing from justice.[2] This succeeded on 13 June 2002, when the Council framework decision on the European arrest warrant and the surrender procedures between Member States (EAW) was adopted. The fast adoption of this instrument, regarded as the first and most striking example of the extensive judicial cooperation in criminal matters adopted within the EU third pillar, was facilitated also by the political atmosphere in the aftermath of 11th September 2001, where the demonstration of ability to combat cross-border crime was a "must".[3]

The EAW brought a number of novelties. The general aim was to simplify and expedite procedures for extradition, respectively surrender, of persons convicted or accused of crimes between the EU Member States. Direct contact between the competent issuing and executing judicial authorities was put to the forefront. The general obligation to recognize and execute the EAW issued by another Member State was established, while allowing only limited grounds for refusal to execute the EAW (see art. 3, 4 of the EAW framework decision). The real executive powers of the central authorities in the extradition process diminished and in principle only the technical and administrative assistance remained in their hands. The main controversial issues which attracted the attention of the national constitutional courts, as will be shown below, include the duty to extradite its own nationals (upon the certain conditions) and the abolishment of double criminality as regards the 32 categories of criminal acts, if criminalized by 3 years of imprisonment at least in the state issuing EAW (see art. 2 par. 2 of the EAW framework decision).

In this paper firstly, I will try to point to the key "messages" arising from the judgements of the three constitutional courts (Czech, Polish, German) on the constitutionality of the legislation implementing the EAW framework decision (EAW FD), which will also reveal the problems behind this instrument. I will briefly remember the ECJ ruling on the validity of the EAW FD at the same time.

Then the Commission report evaluating the implementation of the EAW FD will be examined, while stressing the advantages but noticing also the shortcomings of the operation of the EAW within the EU.

Finally some critical remarks will be expressed, especially as regards the respect to fundamental rights of individuals, legal certainty and proportionality, while implementing the EAW and some of its problematic concepts (disproportionate use even when more useful and

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[2] See: http://ec.europa.eu/justice_home/doc_centre/criminal/recognition/doc_criminal_recognition_en.htm

[3] See: Komárek, J.: European Constitutionalism and the European Arrest Warrant: Contrapunctual Principles in Disharmony**,** Jean Monnet Working Paper 10/05, 2005, p. 7, 8; Alegre, S., Leaf, M.: Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study — the European Arrest Warrant. European Law Journal, 2004, č. 2, sv. 10, p. 201, 202.

proportionate means might be at disposal, abolishment of double criminality). This will be illustrated on some "real-life" examples.

The conclusion will summarize the content of the whole thesis and emphasize the main ideas of the paper.

## 2. EAW TRANSPOSITION UNDER THE SCRUTINY OF THE CONSTITUTIONAL COURTS AND EAW AT ECJ

The issue of extraditing its own nationals was common to all the three Constitutional Courts – in Poland, Germany and the Czech Republic.

In Poland the relevant provision of the Polish Constitution (art. 55 par. 1) did prohibit the extradition of Polish nationals. The Polish Constitutional Court[4] rejected the argument that the extradition and surrender procedure are of different nature, respectively that the explicit prohibition of extradition does not mean at the same time the prohibition of the surrender procedure. It pointed to the fact that both procedures involve the transfer of a person to another country to be prosecuted or to serve a sentence which had been imposed.[5]

The Polish Constitutional Court did not also take advantage of the possibility to interpret the above mentioned prohibition to extradite Polish citizens in the light of another provision of the Polish Constitution (art. 33 par. 3), which provided for the possibility to limit the constitutional rights by statute when it is necessary for the protection of democracy, public security or public order.[6] It might well have been argued that the interests of public security could allow to limit the Polish citizens´ rights not to be extradited, especially when the essence of that right would be untouched, if we consider the possibility of a time-limited surrender for criminal prosecution to another Member State, where the fair trial is guaranteed while the possibility to serve afterwards the imposed imprisonment at home exists.[7] Moreover, it seems to me this would be perfectly in line with the Pupino judgement[8] of the ECJ, which requires member states to interpret the whole body of national legislation in line with the european law, including union law. However, to be fair, it must be said that such a ruling was not yet delivered at that time and also the divergent view, which observed the full prohibition of extraditing/surrendering its own nationals as the essence of that right, particularly when formulated as the rule, is similarly legitimate.

As a result, the Polish Constitutional court held the implementing legislation in the respect of extraditing its nationals as unconstitutional. However, it did so in a very "pro-european

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[4] See: Judgement of the Polish Constitutional Tribunal on the European arrest warrant, in English available at: http://www.trybunal.gov.pl/eng/summaries/summaries_assets/documents/P_1_05_full_GB.pdf

[5] See: Doobay, A., Peters & Peters: Implementation of the European Arrest Warrant Scheme. Justice Conference on Extradition, Deportation and Rendition 31st March 2006 (document available at web), p. 3.

[6] See: Komárek, J.: European Constitutionalism and the European Arrest Warrant: Contrapunctual Principles in Disharmony**,** Jean Monnet Working Paper 10/05, 2005, p. 12.

[7] See:Ibid, p. 12

[8] C-105/03, *„Pupino,"* 16. 6. 2005.

fashion" by postponing the effects of such a decision, while taking advantage of the maximum period of 18 months of prospective temporal limitation.[9]

In Germany, where the Federal Constitutional Court (FCC)[10] was called to rule on the constitutionality of the domestic legislation implementing the EAW FD, the situation was a little bit different from that in Poland. There was no absolute prohibition of extraditing German nationals. However, such a possibility between the EU member states was subject to the statutory regulation and the condition that the rule of law is upheld. While bearing in mind such a limitation, the FCC examined the challenged legislation and found it unconstitutional, when stressing that the legislative discretion offered by the EAW FD was not properly exercised in order to ensure for the German nationals the constitutional safeguards, which must be afforded to them under the German constitution, i.e. the Basic Law (BL).[11] Particularly, it was criticized that some important optional grounds for refusal of an EAW were not transposed, especially the one which makes possible to refuse the execution of the EAW, if the offence at stake was in whole or in part committed in the territory of the executing member state (see Art. 4/7 of the EAW FD).[12] Another reason for declaring the relevant implementing legislation void was the alleged breach or possibility of breach of the non-retroactivity of criminal norms as understood by the FCC. Moreover, the FCC went further in its reasoning and did beg to raise doubts over the mutual trust among the member states as the criminal matters are concerned. It stated that there might be in fact only a limited mutual recognition in the analyzed field and mutual trust is only founded on art. 6, 7 TEU, but does not prove it as such. Therefore, the FCC urged the German legislator to construe the extradition procedure as a 'discretionary process of application of law' and to assess every single case very carefully, while examining all the relevant circumstances of the case and also the system of criminal justice of the member state issuing the EAW. [13]

Finally, the Czech Constitutional Court (CCC),[14] when adjudicating on the EAW domestic implementation, came to different conclusions in comparison to the negative conclusions of the above mentioned constitutional tribunals. It held in affirmative that the national legislation implementing the EAW FD is in conformity with the Czech constitutional legal order. It is

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[9] See: Doobay, A., Peters & Peters: Implementation of the European Arrest Warrant Scheme. Justice Conference on Extradition, Deportation and Rendition 31st March 2006 (document available at web), p. 3; Komárek, J.: European Constitutionalism and the European Arrest Warrant: Contrapunctual Principles in Disharmony**,** Jean Monnet Working Paper 10/05, 2005, p. 13, 14.

[10] Judgement of the the German Constitutional Court on the European arrest warrant, available at: http://www.bverfg.de/entscheidungen/rs20050718_2bvr223604.html

[11] See: Doobay, A., Peters & Peters: Implementation of the European Arrest Warrant Scheme. Justice Conference on Extradition, Deportation and Rendition 31st March 2006 (document available at web), p. 4; Komárek, J.: European Constitutionalism and the European Arrest Warrant: Contrapunctual Principles in Disharmony**,** Jean Monnet Working Paper 10/05, 2005, p. 15, 16.

[12] See: Ibid,

[13] See: Komárek, J.: European Constitutionalism and the European Arrest Warrant: Contrapunctual Principles in Disharmony**,** Jean Monnet Working Paper 10/05, 2005, p. 17, 18.

[14] See: Judgement of the Czech Constitutional Court on the European arrest warrant, Pl. ÚS 66/04, 434/2006 Coll., available in English at: http://angl.concourt.cz/angl_verze/doc/pl-66-04.php

however worth mentioning that the decision was delivered in different environment, both as the national legal order and the European case-law developments are concerned. As regards the former, there was no absolute prohibition of extradition of the Czech nationals as was the case in Poland. The relevant provision of Art. 14 (4) of the Charter of Fundamental Rights and Freedoms, forming part of the Czech constitution, only prohibited the Czech national "to be forced to leave their homeland". While pointing to the historical circumstances, when the constitutional rule at stake was adopted, the CCC showed that the extradition was not meant by the "historic" legislator. Nor could according to the CCC such a view be upheld successfully nowadays in an environment of the EU, where all the EU member states are members of the Council of Europe and are bound by the European Convention on the protection of human rights and fundamental freedoms and more importantly share the common standards and values.

As regards, the recent developments of the ECJ case-law the CCC reflected fully the ECJ Pupino judgement. When arriving to the problems in domestic legislation (which quite similarly to the German one did not take full advantage of implementing the optional grounds for refusing to execute the EAW), threatening in several situations to conflict with the constitutionally protected legal certainty principle, the CCC examined the whole body of the relevant Czech legislation and found a provision (par. 377 of the Czech Code of criminal procedure), allowing him to rule on the constitutional conformity of the challenged domestic legislation transposing the EAW, because such a provision in fact enabled to broaden the grounds for refusal to execute the EAW in line with the EAW FD in a manner compatible with the Czech constitutional legal order as well.

Also other reasons for annulment, such as the breach of "nullum crimen sine lege, nulla ponena sine lege," were rejected, by the argument that the procedural criminal cooperation is regulated and not the substantive criminal law and that the reviewed instrument is only in fact a tool to help the criminal cooperation among the EU member states.

To sum up. The CCC rejected on the merits to annul the challenged domestic legislation transposing the EAW. From a European law point of view, it is interesting to note its reasoning, when referring to the "European" principle of loyalty, european citizenship, mutual trust and the "Euroconform" interpretation.

However, the judgement delivered was not unanimous. The dissenting judges (E. Wagnerová, V. Formánková, S. Balík) raised their objections as regards the mutual trust, sufficient level of common norms and stressed the duty, particularly in criminal matters where the liberty is at stake, to properly control the observance of the fundamental rights, freedoms and principles. The "tone" of the FCC echoed in their dissenting opinions in my view.

Finally, just for the completeness, it must be remembered that after the delivery of the judgements, as referred to above, also the ECJ[15] delivered its ruling on the validity of the EAW FD. Without any surprise it confirmed its validity and found no reason to declare this instrument void. The reasoning was rather slim and not elaborated sufficiently in my view. As regards the legal basis, respectively choosing the FD instead of the convention for the EAW, the reasoning was based on the principle of effectiveness, without any attempt to deliver more

[15] See: C-303/05, „*European arrest warrant,*" (Advocaten voor de Wereld VZW), 3. 5. 2007.

profound justification considering the relationship of the third pillar measures, respectively framework decisions, to the international obligations.

Finally also the allegations of the breaches of fundamental principles such as the principle of legality of criminal offences and criminal sanctions and non-discrimination and equality, which related to the abolishment of the requirement of double criminality and the introduction of the list of 32 categories of criminal offences, were rejected as well. Here the "magic words" of "mutual trust" and "mutual recognition" played the crucial role.

## 3. EVALUATION OF THE IMPLEMENTATION OF THE EAW – MAIN SUCCESSES AND SHORTCOMINGS

The report of the Commission on the implementation of the EAW FD by the member states of the EU[16] stresses first and foremost that the implementation of the EAW represents a great success, because there is no doubt that the "extraditing" procedures have simplified and speeded thanks to the implementation of the EAW. The figures showed that in 2005 some 6900 EAWs were issued and in 1770 cases, the person wanted was traced and arrested. Of those arrested over 86% were actually surrendered to the issuing Member State (1 532 persons surrendered). As regards the time limits the figures show that on average the time taken to execute requests, which used to be around a year under the old extradition procedure, has been reduced to under 5 weeks (43 days to be precise), and even 11 days in the frequent case, where the person consents to the surrender. [17]

As regards filling in the EAW and finding the competent judicial authorities the European judicial network (EJN) proves to be a lot helpful. As regards dealing with the competing EAWs, Eurojust plays a very positive role.

However, also a few shortcomings have been also detected and criticized. These often result from the false or improper implementation of the EAW. For instance Ireland has great difficulties to observe the time limits prescribed for the execution of the EAWs (let´s remember Půta, Šulej cases, which attracted the attention of the Czech media, where it took years to surrender them to the Czech Republic). There are also some EU member states, which treat their own nationals preferentially in conflict with the requirements of the EAW (Poland which tests double criminality; Czech Republic which does not surrender its nationals for the offences committed before 1. 11. 2004; requirement of reciprocity or conversion of the sentence imposed are also criticized; seemingly also the German implementing legislation following the FCC ruling, which stipulates that in "mixed" cases for which there is no clear national or foreign reference a double criminality check should be carried out and that the seriousness of the alleged offence should be weighed against the effectiveness of any

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[16] See: REPORT FROM THE COMMISSION on the implementation since 2005 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, Brussels, 11. 7. 2007, doc. COM(2007) 407 final (document available at web). Unfortunately, no up-to-date Report from the Commission is available. However, it is expected that the Final report on the fourth round of mutual evaluations – The practical application of the European Arrest Warrant and corresponding surrender procedures between Member States will be adopted within the Justice and Home Affaires Council (JHA Council) on 5 June 2009.

[17] See, Ibid, p. 4.

proceedings). In addition there are a number of other national peculiarities, which divert from the requirements of the EAW FD, such as the incorrect transposition as regards the position of central authorities, time limits or the grounds for the refusal of execution of the EAW, or even their extension etc..[18]

## 4. SHORTCOMINGS OR LEGITIMATE INCOMPATIBILITIES? PRACTICAL REFLEXION

Finally, it may be summarized that the EAW works, and thus in general very well. In spite of this fact, however, we lack the precise and proper implementation of the EAW FD in many respects in various EU member states. In my view, however, not all these incompatibilities do amount to the real shortcomings. Sometimes, in my opinion, these incompatibilities might derive from the legitimate legal traditions of the member states and the effort to apply the EAW in a proportionate way, and thus in conformity with the fundamental rights and principles. If for example the preferential treatment of the national citizens (and residents) is well founded upon good reasoning and at the same time does not lead to the unjust impunity of the offenders/criminals, then in my view it is not adequate to name such incompatibilities shortcomings.

To be specific, in my view, if for instance the Czech judge is considering for some minor offence, where a custodial sentence for a maximum period of at least 12 (and more) months is virtually threatening, to issue an EAW, he should assess all the circumstances of the case very carefully, and weigh other alternative solutions to give the best affect to the purpose of criminal proceedings (which shall be at best effective, cheap and give a good prospect of delivering the just criminal judgement), but also the interests of the affected persons as well (be it the accused, victim and their interest, e.g. on right to family life, respectively the most effective social rehabilitation), especially bearing in mind the possibility of lengthy custodial criminal prosecution in the member state issuing EAW (compare the maximum duration provided in for in the Czech Code of criminal procedure, i.e. art. 71/8). Typically, for example, the judge trying the prosecuted Slovak, living and working with his family in the Slovak Republic, who committed the criminal offence of a minor seriousness, while staying on holiday in the Czech Republic, should in my view rather stick to the transfer of criminal proceedings (if possible) than applying “blindly” the EAW.

A great advantage in this context of the so-called proportionality test, which in my view shall be exercised by the competent judicial authority issuing the EAW, in the Czech legal order is the provision of article 385 of the Czech Code of Criminal Procedure. This provision inter alia provides that the court would not issue an arrest warrant, if the imprisonment sentence to be imposed is supposed to be only a conditional one or unconditional one not exceeding 4 months or if the issuing of an arrest warrant could be disproportionate for various reasons (to simplify the matter, be it the disproportionate costs in the light of a minor criminal offence at stake or particular circumstances of the case at hand).

[18] See, Ibid, p. 5, 6, 8, 9.

In my view, such a provision could prove to be well inspiring for other member states or even the EU as a whole, when considering the possible amendments of the EAW FD and could reasonably solve the problem of loads of EAWs being issued in some member states even for minor offences (e.g. Poland).

On the other hand some incompatibilities might represent real shortcomings and problems rather than legitimate incompatibilities or even reasonable advancements or developments, as demonstrated above. Let´s name one example from the Czech Republic in the position of the executing judicial authority. If the surrender immunity for the Czech nationals for the crimes committed before 1.11. 2004 (which clearly contradicts the EAW FD and is in my view rightly criticized) leads either by the unfortunate combination of the relevant laws, both the domestic and foreign ones, or the practice, again both the domestic and foreign one, to the real and unjust impunity, then the adequate steps should be taken, either in the change of legislation at hand and/or at least in the practice in order to solve such dissatisfactory situations (also media reported on some "real-life" examples, which might be of significance here, for example about the EAWs issued on the businessman Štáva, the chief of the firm Diag Human, trading with blood, where probably the only theoretical possibility to solve the case might be offered by the transfer of criminal proceeding; another example communicated within the practitioners in the criminal cooperation represent the Czech traders/trafficers in drugs, who although convicted in Italy cannot be surrendered there to serve their sentence, and it also seems there is no effective possibility to transfer the sentence, and also the criminal proceedings due to the ne bis in idem rule in our § 11 of the Code of Criminal Procedure, respectively its strict implementation, where the condition of the sentence is missing, which does neither follow the current wording of the relevant Art. 54 of the Schengen Implementing Agreement).

## 5. PRACTICAL INSTANCES OF THE POSSIBLE BREACHES OF FUNDAMENTAL RIGHTS AND PRINCIPLES IN THE CONTEXT OF IMPLEMENTATION OF THE EAW

Although it is largely recognized that the EU Member States, as the members of the Council of Europe and the signatories of the European convention on the protection of human rights and fundamental freedoms (ECHR) and its Protocols, developed into the area where the serious breaches of human rights, fundamental freedoms and principles do not occur, and if yes, then only exceptionally, this fact in my view should not result in a mechanical application of the EAWs, without examining particular circumstances of the case, especially, if there might be a risk of serious breach of human rights (even though an exceptional one).

Which kinds of the possible human rights breaches do I mean? While executing the EAW, some fundamental human rights and principles might be affected. Lets´ enumerate the most important a serious examples: the prohibition of torture (art. 3 ECHR), the right to liberty (art. 5 ECHR), very important – the right to a fair trial (art. 6 ECHR), double criminality and retrospective application (art. 7 ECHR).[19]

[19] See: Alegre, S., Leaf, M.: Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study — the European Arrest Warrant. European Law Journal, 2004, N. 2, V. 10, p. 202–213, the thesis elaborated this subject more in detail.

Now, I will try to illustrate briefly on a few "real-life" examples that such breaches might well occur also in the area of freedom, security and justice within the EU.

As regards double criminality and the prohibition of retrospective application, it might be assumed that the removal of the principle of double criminality in relation to the list of 32 categories of offences, particularly in conjunction with the possibility to apply the EAW to the offences that occurred prior to the implementation of the EAW, might result in the breach of such a principle. Lets´ imagine, as Alegre, S. and Leaf, M. suggest, the EAW being issued for the abortion, classified as the infanticide, respectively, the murder, committed before the implementation of the EAW in issuing state, while being completely legal in the executing state.[20]

Other instances of possible breaches of fundamental rights, specifically for example the right to a fair trial and the prohibition of torture are also showed in the thesis of Alegre, S. and Leaf, M.. Let´s remind these cases briefly. In the extradition case of ex p. Rachid Ramda[21] the defendant, who should be subject of extradition, argued that the basis of the French government´s case against him was a confession obtained by a co-defendant (Bensaid) that might have been obtained by means of torture or inhuman or degrading treatment. A similar case of I. Dorronsoro[22] concerned a request for extradition to Spain of a suspected ETA terrorist. Again, the defendant alleged that his extradition was requested solely on the basis of declarations that were obtained from another person (I.S. Diaz) through torture. The competent French court consequently refused the request and discharged the suspect.

Finally, the last case, which is worth mentioning, is the case of Abdallah Kinai.[23] In this case the competent German court refused an extradition request by France based on a conviction in absentia. The court held that the conviction was based on evidence, which was utterly insufficient for a conviction of conspiring in the attempted murder of the Imam of the Paris Mosque. The French case namely rested primarily on a witness testimony that Kinai had responded to the news that Imam had been „taken care of" with „a little smile."

The above-mentioned cases show well in my view, that also within the EU the courts shall be rightly supposed to examine properly the observance of fundamental rights in each individual case. In my opinion, this holds true also within the implementation of the EAW. Although there might be a general presumption of the observance of fundamental rights within the EU area of freedom, security and justice, the competent courts shall in my view nevertheless in no way resign to check carefully the real fundamental rights observance in each individual case, especially when serious doubts in this respect arise. Practically, this should in my view mean that the executing judicial authority when deciding on the execution of the EAW shall assess

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[20] See: Alegre, S., Leaf, M.: Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study — the European Arrest Warrant. European Law Journal, 2004, N. 2, V. 10, p. 208, 209.

[21] See: Ibid , p. 210 – 212.

[22] See: Ibid, p.212, 213.

[23] See: Ibid, p. 213.

the refusal grounds as provided for in art. 3 and 4 of the EAW FD in the context of the presumed observance of international fundamental rights´ standards (especially those derived from the ECHR), as emphasized in art. 1 par. 3 and point 12 of the preamble of the EAW FD. This should mean in my view, that especially when serious doubts occur as regards the full observance of such standards, the execution of the EAW should be carefully considered, respectively refused, if necessary for the proper fundamental rights´ observance (in my view, however, such a refusal on fundamental rights´ grounds should be only exceptional in the EU area of freedom, security and justice, where fundamental rights are generally fully and well protected).

This holds true the more, if till now no unified standard of procedural rights in criminal proceedings within this EU area of freedom, security and justice has been adopted and therefore mutual trust (although generally recognized, because based i.a. on ECHRs´ standards, which however, are not always fully respected and may sometimes lack the effective control mechanisms as well) might be questioned (in individual cases).

## 6. CONCLUSION

In this thesis I tried to deal with various problematic aspects of the EAW implementation. Firstly, I sketched the case-law of the constitutional tribunals in Poland, Germany and the Czech Republic on the constitutionality of the domestic transposition of the EAW FD. Then I remembered the ECJ judgement on the validity of the EAW FD. Afterwards, I tried to stress the main advantages and successes of the operation of the EAW within the EU, which brought about great simplification and speeded a lot the whole procedure, which strengthens the fight against criminals across the borders.

However, I also critically pointed to a few shortcomings and incompatibilities in the implementation of the EAW. I attempted to show that while implementing the EAW the proportionality as well as the fundamental rights should be fully observed and protected. In this respect I argued, that some “first-sight” incompatibilities might be rather regarded as developments and advancements in the context of the full respect for fundamental rights and principles rather than the shortcomings of strictly read and implemented EAW FD.

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