The Implementation of the European Arrest Warrant and the Surrender Procedures between Member States

2019/2207(INI) - 08/12/2020 - Committee report tabled for plenary, single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted an own-initiative report by Javier ZARZALEJOS (EPP, ES) on the implementation of the European arrest warrant and the surrender procedures between Member States.

This report assesses the application of the mechanism established by Framework Decision 2002/584/JHA on the European Arrest Warrant in the Member States concerned. This instrument is based on the principle of mutual recognition, which means that European arrest warrants issued in one Member State must be directly recognised and enforced in another Member State, except in certain specific cases.

General overview of the implementation of the European arrest warrant

Members recognise that the European arrest warrant is an effective instrument to combat serious cross-border crime and to bring to justice the perpetrators of serious criminal offences within the Member State in which criminal proceedings have been or are being conducted. However, they note that there are some problems and that there is a need to improve it to make it more effective,

The problems encountered mainly concern:

- detention and prison conditions, proportionality and the implementation of procedural safeguards enshrined in EU law, in particular the right to dual legal representation in both executing and issuing States;

- training;

- specific rule of law issues, execution of custodial sentences, time limits and decisions in absentia;

- the issue of dual criminality;

- inconsistency in the application of the grounds for refusal to execute European arrest warrants;

- the lack of a comprehensive data system to produce reliable statistics on both qualitative and quantitative aspects of the issuing, execution or refusal to execute European arrest warrants.

Members recommended that the European arrest warrant should not be misused for minor offences, where grounds for pre-trial detention do not exist, while suggesting that the use of the European arrest warrant should be limited to serious criminal offences.

Recommendations to improve the functioning of the European Arrest Warrant

In particular, the report makes the following recommendations:

- collect reliable and up-to-date data and transfer them to the Commission in a systematic way in order to better evaluate judicial cooperation and detect weaknesses;

- strengthen the principle of loyal cooperation and to clarify the issue of double criminality, which is a problem in some cases, mainly as regards differences of interpretation of the scope of verification and the question of the list of offences for which no verification should take place;

- ensure the full implementation of the Directives on procedural rights with a view to guaranteeing the right to a fair trial;

- an analysis of common offences between Member States in order to better define when the European arrest warrant should be used;

- assess the inclusion of new offences or categories of offences, such as environmental crimes, certain forms of tax fraud, offences hate crimes, sexual abuse, gender violence, offences committed with the use of digital tools, offences involving the use of violence or constituting a serious threat to the public order of the Member States, crimes of genocide, crimes against humanity and war crimes;

- define more precisely the obligations and competences of national authorities and EU bodies involved in European arrest warrant proceedings and ensure that they are specialised and have practical experience;

- ensure uniform application and effective monitoring with regard to time limits;

- provide adequate funding for legal aid for persons subject to European arrest warrant procedures;

- support the European Judicial Training Network and existing national training platforms for the judiciary, as well as launch, if necessary, a new training platform for practitioners on mutual recognition instruments.

Fundamental rights

The report called on Member States to respect the obligations under Article 2 of the Treaty on the European Union on human dignity, freedom, democracy, equality, the rule of law and human rights, including minority rights. In this respect, detention conditions should respect human dignity and investigations should be carried out in case of violation of rights.

While reaffirming the importance of an EN mechanism for democracy, the rule of law and fundamental rights, Members called on the Commission: (i) to study the feasibility of supplementing instruments on procedural rights, such as on the admissibility of evidence and conditions of pre-trial detention, based in particular on Council of Europe standards and (ii) to establish an assessment of compliance with the *ne bis in idem* principle and a proportionality check when issuing a European arrest warrant.

Ensuring the coherence of the legal framework of the European Arrest Warrant

Members considered that consistency and efficiency remain the main problems, and that there is room for improvement in this respect. They called on the Commission to ensure coherence in the area of mutual recognition, in order to take account of the case law of the Court of Justice of the EU, the current level of harmonisation of Member States' criminal law and procedures and the fundamental rights recognised by the Charter of Fundamental Rights.