

SOURCES OF EXTRADITION LAW IN THE LEGAL SYSTEM OF THE EUROPEAN UNION

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INTRODUCTION

The institution of extradition is regulated primarily by international agreements at the multilateral or bilateral level and in the domestic law of each country.

Among the regulations related to extradition, nowadays bilateral extradition agreements dominate, which ration the terms and conditions of the mutual transfer of persons suspected or convicted, in order to conduct criminal proceedings or the execution of the sentence. On the basis of the bilateral agreement, extradition between countries is executed, assuming that neither of the countries is simultaneously a party in a multilateral extradition agreement. Bilateral agreements can also modify, respecting the parties of this agreement, the content in the legislation of a multilateral agreement¹.

The basis for extradition could also be reciprocity, involving the release of alleged criminals or persons appealing from execution of the penalty, if the country of the offender can expect similar conduct in the future from the country asking for extradition². As a result of the spread of the view that extradition is not a political instrument of governance, but should primarily serve the purposes of justice, reciprocity began to lose its former importance. While earlier, as a rule resulting from political reasons it was partly justified, now in a situation where extradition is an indispensable tool for international legal assistance in criminal matters, reciprocity cannot be regarded as a *sine qua non* for extradition, but only as a condition desirable and justified³.

The source of extradition law is mainly international agreements. The regulations in domestic law are subsidiary to the contracts and are generally used when there is a lack of an appropriate international

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¹ M Płachta, 'Zagadnienia ekstradycyjne w prawie polskim' (1999) 2 *Studia Europejskie* 73 – 74.

² More on the subject B Wierzbicki, *O azylantach i ekstradycji przestępców* (1982) 100; M Mozgawa, 'Ekstradycja i jej substytuty. Zarys problematyki' (2008) 3 *Wojсковy Przegląd Prawniczy* 41.

³ B Wierzbicki (n 2)101.

agreement. The principle of mutuality is, however, not usually regarded as an independent legal basis for extradition, but as a condition whose realization requires terms of the agreement or domestic law⁴.

The European Union plays an important role in the improvement and unification of the sources of extradition law. Within its framework, legal instruments were developed and adopted which completely regulate the institution of extradition between Member States and between the EU and third countries.

I. THE INSTITUTION OF EXTRADITION WITHIN THE EUROPEAN UNION LAW

The actions involving the formation and unification of the sources of extradition law and the modernization of the institution of extradition, were taken primarily in the field of the third pillar, covering police and judicial cooperation in criminal matters⁵. The beginning of this cooperation aimed at reducing and fighting against terrorism and organized crime and was adopted in 1975 by Home Affairs Ministers of Member States of European Community, at an informal meeting in Rome, which led to the appointment of the TREVI (Terrorisme, Radicalisme, Extremisme, Violence, Internationale)⁶.

Outside the framework of the European Union, between the Benelux countries, France and the Federal Republic of Germany, on 14 June 1985 the Agreement, known as the Agreement from Schengen⁷, was signed, regarding the gradual abolition of checks at their common borders.

Details of the arrangements of this Agreement have been implemented in the Convention signed in Schengen on 19 June 1990, introducing Agreement between the Governments of the Benelux Economic Union States, the Federal Republic of Germany and the French Republic for the gradual abolition of checks at common borders⁸. The Convention

⁴ H Zięba – Załucka, 'Instytucja ekstradycji w prawie konstytucyjnym i międzynarodowym' in E Dynia (ed), *Nauka prawa międzynarodowego u progu XXI wieku, Materiały pokonferencyjne* (2003) 260.

⁵ On the third pillar see SM Amin, *Współpraca w zakresie wymiaru sprawiedliwości i spraw wewnętrznych w Unii Europejskiej. Zarys zagadnienia* (2002) 53 - 207; W Czapliński, 'III filar Unii Europejskiej – Współpraca Sądowa i Policji w Sprawach Karnych' in J Barcz (ed), *Prawo Unii Europejskiej. Zagadnienia systemowe. Prawo materialne i polityki. Omówienie wybranych orzeczeń ETS. Traktat o Unii Europejskiej. Traktat ustanawiający Wspólnotę Europejską* (2004) 139 – 154; F Jasiński, K Smoter, *Obszar wolności, bezpieczeństwa i sprawiedliwości Unii Europejskiej. Geneza, stan, perspektywy rozwoju* (2005); P Wawrzyk, *Polityka Unii Europejskiej w obszarze spraw wewnętrznych i wymiaru sprawiedliwości* (2007).

⁶ P Durys and F Jasiński report that the Trevi group name derives from the famous Roman fountain „di Trevi”, which is situated near the place of meeting of ministers. See P Durys, F Jasiński, 'Zwalczanie terroryzmu w ramach Unii Europejskiej' (2000) 6 Wspólnoty Europejskie 38.

⁷ Agreement came into force on 31.12. 1994, OJ 2000 L 239/1. Polish text, A Przyborowska – Klimczak, E. Skrzydło – Tefelska, 2 *Dokumenty europejskie* (1999) 239 – 246. More on the agreement: A Grzelak, *Unia Europejska a prawo karne* (2002) 26.

⁸ Implementing Convention entered into force on 26. 03. 1995, OJ 2000 L 239/1.

implementing the agreement was a breakthrough that initiated the phase of dynamic development of cooperation in criminal matters between the Member States of the European Communities. It is not just agreement for "the gradual abolition of checks at internal borders" but also - and perhaps primarily - the Convention on the elimination of the consequences of that control. It had to take into account the circumstances of the easier movement of criminals and the fact that citizens crossing borders without internal controls within the Schengen area will commit crimes outside their home area of jurisdiction. Therefore, it became necessary to introduce solutions to facilitate the prosecution and sentencing of such individuals⁹.

To ensure safety, threatened by a lack of controls at the internal borders of the state - the parties agreed on various compensatory measures, which include, inter alia, cooperation in the field of qualified legal assistance and extradition.

The purpose of the regulations about mutual legal assistance in criminal matters, extradition and the rules of transferring individuals in order to fulfill criminal convictions was to supplement and facilitate the application of the following conventions:

1. European Convention on Extradition of 13 December 1957¹⁰ together with two additional Protocols in force at the time¹¹,

⁹J Garstka, 'Współpraca w sprawach karnych' in F Jasiński, K Smoter, *Obszar wolności, bezpieczeństwa i sprawiedliwości Unii Europejskiej. Geneza, stan i perspektywy rozwoju* (2005) 343.

¹⁰Convention entered into force on 18.04.1960, ETS No 24. Polish text of convention, P Durys, F Jasiński, *Walka z terroryzmem międzynarodowym. Wybór dokumentów* (2001) 91 – 102; Poland has deposited its instrument of ratification on 15.06.1993: OJ 1994, no. 70, item 307. Party to the Convention are the following countries: Norway (since 18.04.1960); Sweden (since 18.04.1960); Turkey (since 18.04.1960); Greece (since 27.08.1961); Denmark (since 12.12.1962); Italy (since 4.11.1963); Ireland (since 31.07.1966); Switzerland (since 20.03.1967); Netherlands (since 15.05.1969); Austria (since 19.08.1969); Lichtenstein (since 26.01.1970); Cyprus (since 22.04.1971); Finland (since 10.08.1971); Germany (since 1.01.1977); Luxemburg (since 16.01.1977); Spain (since 15.08.1982); Iceland (since 18.09.1984); France (since 11.05.1986); Portugal (since 25.04.1990); Great Britain (since 14.05.1991); Czech Republic (since 1.01.1993); Slovakia (since 1.01.1993); Hungary (since 11.10.1993); Bulgaria (since 15.09.1994); Croatia (since 25.04.1995); Slovenia (since 17.05.1995); Lithuania (since 18.09.1995); Malta (since 17.06.1996); Estonia (since 27.07.1997); Latvia (since 31.07.1997); Belgium (since 27.11.1997); Romania (since 9.12.1977); Moldavia (since 31.12.1997); Ukraine (since 9.06.1998); Albania (since 17.08.1998); Macedonia (since 26.10.1999); Russia (since 9.03.2000); Andorra (since 11.01.2001); Georgia (since 13.09.2001) and Armenia (since 25.04.2002). In addition to the Member States, the Council of Europe (except for San Marino and Bosnia and Herzegovina) also parties to the Convention are Israel and South Africa. See. *Explanatory Report* available online: <http://conventions.coe.int> (access: 20.12.2015).

¹¹ The Additional Protocol of 15 October 1975, the Protocol has entered into force on 20.08.1979, ETS, no. 86. Poland has deposited its instrument of ratification 15 June 1993: Dz. U. 1994, no 70, item 307; The second additional protocol from 17th of March 1978, the Protocol entered into force 5.06.1983, ETS, no 98. Poland has deposited its instrument of ratification on 15th of June 1993: Dz. U. 1994, no. 70, pos. 307. Currently, there are 4 additional protocols to the European Convention on Extradition of 1957. Third Additional Protocol to the European Convention on Extradition signed on 10.11.2010. Protocol entered into force on 01.05.2012. "Council of Europe Treaty Series" (further CETS), no. 209. Poland signed the Protocol alone 07.10.2011. Fourth Additional Protocol to the European

2. European Convention on Mutual Assistance in Criminal Matters of 20 April 1959¹², along with additional Protocol signed 1978¹³, and also
3. Convention on the Transfer of Sentenced Persons of 21 of March 1983¹⁴.

Convention implementing the agreement in Title III "Police and Security", in Chapter 4, Articles 59 to 66, regulates issues concerning extradition. It also contains decision aimed at facilitating the extradition procedures¹⁵.

The Executive Convention extended the scope of extraditable offences to tax offences, established the principle of direct communication of central authorities (i.e.: national Ministries of Justice) and introduced the possibility of extradition of a person who is willing to be extradited without "formal extradition proceedings", the so-called simplified extradition. According to J. Garstka, the most relevant - from a practical point of view, is the execution of extradition - it also should be acknowledged to include in the structure of the extradition proceedings the Schengen Information System, by leveling the alert based on Article 95 of the Convention Implementing with the request for temporary arrest, in accordance with article 16 of the Convention of the Council of Europe. The Schengen Information System has become a permanent part of issuance procedures, allowing the effective retention of wanted persons. It should not be forgotten that so far, neither the Convention nor the Schengen Information System alone, has covered all EU countries¹⁶.

Another step aimed at improving the sources of extradition law (so-called "fax" convention¹⁷) was signing on 26 May 1989 in San Sebastian between Member States of the European Communities. The Convention aims at the simplification and modernization of methods of transmitting extradition requests.

The Treaty of European Union signed on 7 February 1992 in Maastricht, in articles 29 and 31 defining "issues of common interest" refers to specific actions in the field of judicial cooperation in criminal matters.

Article 31 of the Treaty, among the matters of mutual interest, lists benefits of extradition between the Member States of the European Union. In order to develop the arrangements of Articles 29 and 31 of the Treaty on

Convention on Extradition signed on 20.09.2012. Protocol entered into force on 01.06.2014., CETS, no 212. Poland signed the Protocol alone 20.09.2012.

¹²OJ 1999, no76, item 854.

¹³OJ 1999, no 76.

¹⁴ Convention entered into force on 1.07.1985, ETS, no. 112; OJ 1995, no 51, item 279. Convention is supplemented by additional protocol from 18.12.1997, Which entered into force on 1.06.2000, ETS, no 167; OJ 2000, no 43, item 490.

¹⁵ On the subject of extradition cooperation of states within the Schengen acquis see Declaration of the Schengen Executive Committee on extradition from 26th of June 1996, OJ 2000, no L 239/435.

¹⁶ Garstka (n 9) 351.

¹⁷The agreement was concluded within the framework of European Political Cooperation (EPC – European Political Cooperation). See S Przyjemski, *Prawo Wspólnot Europejskich a prawo polskie. Prawo karne* (1997) 55.

European Union, steps have been taken towards the introduction of amendments to the extradition system.

During the informal meeting of Justice Ministers in Limelette, which took place on 27 - 28 September 1993 the agreement on the abolition of restrictions on the application of the European Convention on Extradition from the 1957¹⁸ was reached. As a result of actions taken in this direction recognizing the similarities in politics and trust in the criminal justice system between Member States of European Union the following were adopted:

1. The Convention on simplified extradition procedure, established on the basis of Article K. 3 of the Treaty on European Union signed on 30 March 1995¹⁹, which was the first of this type of remedy adopted under the third pillar of the European Union. The basic assumptions of this Convention refer to existing solutions in extradition law of European countries, especially the French extradition law²⁰. It restricted the amount of information required and introduced - for Shengen regulations - simplified extradition, regulating also the issue of the possibility of disclaiming the specialty rule by the searched person. The Convention also provides for rules concerning the deadlines under which various actions within the extradition procedure may be carried out. If they fail to meet the deadlines they are not subject to any sanctions, however, they reflect the will of accelerating the extradition procedures²¹. According to C. Mik, the Convention is characterized as service in relation to the European Convention on Extradition of 1957, by facilitating its application and supplementing its terms²²,
2. The Convention on Extradition between the Member States of the European Union of 27 September 1996²³, established on the basis of Article K. of the Treaty on the European Union. The main objective of this Convention is to define the legal framework for extradition within the European Union²⁴. The Convention has broadened the scope of extraditable offences again, lowering the upper limit of the legal minimum required to recognize a crime for extradition from 12 to 6 months. But it also included within its scope means other than a custodial sentence, involving the deprivation of liberty in the

¹⁸ A Gruszczak, 'Historia współpracy w dziedzinie wymiaru sprawiedliwości i spraw wewnętrznych: od TREVI do Tampere' in F Jasiński, K Smoter, *Obszar wolności, bezpieczeństwa i sprawiedliwości Unii Europejskiej. Geneza, stan, perspektywy rozwoju* (2005) 30.

¹⁹ OJ 1995, no C 78/2. Polish text of the Convention, E. Zielińska (ed), 3 *Prawo Wspólnot Europejskich a prawo polskie. Dokumenty karne* (2000) 15 – 22; Poland ratified the Convention on 23.07. 2004: OJ 2004, no 191, item 1955.

²⁰ Cf M Plachta, 'Recent Developments in the Extradition Law Within the European Union, and the New Polish Domestic Legislation' (1998) 2 *Yearbook of Polish European Studies* (further YPES) 95.

²¹ Garstka (n 9) 351.

²² C Mik, *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki, t. I* (2000) 387.

²³ OJ 1996, no. C 313/1. Polish text of the Convention, E. Zielińska (n 19) 56 – 70; Poland ratified the Convention on 23. 07. 2004. See: Action Plan for the fight against organized crime of 28 April 1997, OJ 1997, no. C 251/1.

²⁴ A Gruszczak, *Unia Europejska wobec przestępczości* (2002) 105.

institution of a kind other than a prison. It introduced - although not in a binding way - the principle of extraditing its own citizens, leaving the possibility to derogate from giving its own citizens. The Convention established a system of periodic review and repeated the requirements of the "fax" Conventions on the transmission of applications, taking into account also the possibility of using other means of telecommunications, such as e-mail²⁵.

The Treaty of Amsterdam of 2 October 1997²⁶ set a new goal for the Union, which is "an area of freedom, security and justice"²⁷, which guarantees the free movement of persons, while ensuring appropriate control measures at the external borders, to prevent and combat crime²⁸. The Treaty included the "Protocol on the inclusion of the Schengen acquis into the framework of the European Union"²⁹, allowing the application of the principles established by the parties to agreements on cooperation in the field of Justice and Home Affairs³⁰. The transfer of certain matters to the first pillar and the incorporation of the Schengen acquis into the framework of the European Union resulted in leaving those in the third pillar essentially based on relating to judicial cooperation in criminal matters and police cooperation, which still relied on legal international mechanisms (Article 61e TEU). The consequence of this was to change the name of this pillar for "Cooperation between police and judicial authorities in criminal matters". Article 29 of the Treaty on European Union states that "the Union's objective is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common actions among the Member States in the field of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia"³¹. The main objective of this cooperation - increasing the security of citizens - is to be achieved by preventing, and fighting against, crime, especially organized crime, and in

²⁵ J Garstka (n 9) 351 – 352.

²⁶The text of the Treaty on European Union and the Treaty establishing the European Community in the Treaty of Amsterdam version, 3 *Dokumenty europejskie* (1999) 45 – 95 and 99 - 337.

²⁷Art. 29 (earlier K. 1), which states: „celem Unii jest zapewnienie obywatelom wysokiego poziomu bezpieczeństwa w obszarze wolności, bezpieczeństwa i sprawiedliwości, poprzez podejmowanie przez Państwa Członkowskie wspólnych działań w zakresie współpracy policyjnej i sądowej w sprawach karnych oraz przez zapobieganie rasizmowi i ksenofobii i zwalczanie tych zjawisk”, *Dokumenty europejskie* (n 26) 73.

²⁸ For more on this topic see: N Fenelly, ‘The Area of „Freedom, Security and Justice” and the European Court of Justice-a Personal View’ (2000) *International and Comparative Law Quarterly* 1.

²⁹Text of the protocol IC Kamiński, *Unia Europejska. Podstawowe akty prawne* (2nd ed 2005) 525 – 531.

³⁰More information on this process, see C Elsen, ‘Incorporation juridique et institutionnelle de Schengen dans l’UE’ in M Boer (ed.), *Schengen Still Going Strong. Evaluation and Update* (2000) 11; K Rokicka, ‘Włączenie acquis Schengen w ramy prawne Unii Europejskiej’ (2000) 2 *Studia Europejskie* 79 – 90; W Czapliński, *Obszar wolności bezpieczeństwa i sprawiedliwości. Współpraca w zakresie wymiaru sprawiedliwości i spraw wewnętrznych* (2005) 17; WSz Staszewski, ‘Swoboda przepływu osób w prawie pierwotnym Wspólnot Europejskich’ in J Menkes (ed), *Prawo międzynarodowe – problemy i wyzwania. Księga pamiątkowa Profesor Renaty Sonnenfeld – Tomporek* (2006) 498 - 505.

³¹ *Dokumenty europejskie*, (n 26) 73.

particular with regard to terrorism, trafficking people and offences against children, illegal drugs, arms trafficking, bribery and fraud.

The Treaty of Amsterdam in the reformed Article K. 3 (now Article 31 TEU), in the field of judicial cooperation in criminal matters states the need to "facilitate extradition between Member States"³².

On the 29th of September 2000 the Convention on Mutual Assistance in Criminal Matters between Member States of European Union was passed³³. Additionally on 16 October 2001 an Additional Protocol was adopted to this Convention³⁴.

The Nice Treaty from the 26th of February 2001³⁵, confirmed the aim of the EU, which is "(...) to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the field of police and judicial cooperation in criminal matters and by preventing and fighting against racism and xenophobia "³⁶. This objective requires the establishment of close cooperation between states, their judicial and police services, which will serve to prevent and combat all forms of crime. The instrument in the struggle to achieve this objective was supposed to be legal acts adopted under the third pillar of the Union, and in particular the conventions and framework decisions³⁷.

By virtue of Article 31, paragraph 2 of the Treaty, the European Council is obliged, inter alia, to facilitate close cooperation between Eurojust and the European Judicial Network, in particular with the aim to facilitate the execution of requests for legal assistance and extradition.

Due to the fact that existing EU legislation on extradition failed to meet the hopes pinned on them, and that there was a real threat from rampant terrorism, the European Union saw the need to accelerate the legislative work on the issue of extradition³⁸.

Representatives of Heads of State and Government, President of the Commission, the European Parliament and the High Representative for Common Foreign and Security Policy, at the extraordinary European Council in Brussels on 12 September 2001, called for the development of a European arrest warrant and extradition in accordance with the Tampere

³² Cf *Dokumenty europejskie* (n 26) 75.

³³ OJ 2000 C 197/1. The Convention expands the circle of proceedings in which legal aid should be granted. The regulation in Art. 3. par. 2 requires legal assistance in proceedings against a legal person - both in proceedings conducted by administrative authorities, described in the same manner as in Art. 49 of the Convention implementing the Schengen Agreement. (Article 49 specifies the types of proceedings in which - in addition to criminal proceedings - mutual assistance will be provided).

³⁴ OJ 2001 C 326/2.

³⁵ OJ 2004, no 90, item 864, appendix 2.

³⁶ Cf art. 29 of the Treaty.

³⁷ J Banach – Gutierrez, 'Rozwój współpracy sądowej w sprawach karnych państw Unii Europejskiej' (2004) 10 *Jurysta* 8 - 9.

³⁸ S Allegre, M Leaf, 'Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study – the European arrest Warrant', (2004) *European Law Journal* 202. Similarly: KK Kuczyński, 'Znaczenie Europejskiego Nakazu Aresztowania w zwalczaniu terroryzmu w Unii Europejskiej', (2005) 1 *Studia Europejskie* 63.

Conclusions³⁹. The United States effectively and strongly pushed for EU member states to adopt, as soon as possible, a legal basis for the European arrest warrant, in the light of the horizontal approach to fighting international terrorism⁴⁰.

The Draft Framework Decision on the European arrest warrant was adopted by the Commission on 19th September 2001, and on September 21, 2001 at the extraordinary European Council in Brussels a detailed plan of action confirming an agreement on the European arrest warrant⁴¹.

Work on the Framework Decision lasted only 3 months, and its current shape differs from the original version of the decision proposed by the Commission on 19 September 2001. This project contained a number of definitions of items that were omitted in the final version of the decision⁴².

The result of these works is the Council Framework Decision on the European arrest warrant and the surrender procedures between Member States of 13 June 2002⁴³. It is the first instrument of the European Union, implementing the principle of mutual recognition⁴⁴.

The preamble to the Framework Decision on the EAW determines the abolition of formal extradition proceedings in relation to people trying to evade justice after final conviction and accelerates extradition procedures in reference to people suspected of committing a crime and is intended to "avoid the complexity and risk of delays in the current extradition procedures"⁴⁵.

The Framework Decision on the EAW, upon its entry into force⁴⁶ is supposed to replace all the Acts, existing up to now, underlying the extradition rules between Member States of European Union, namely:

- European Convention on Extradition from 1957

³⁹ F Jasiński, 'Unia Europejska wobec zjawiska terroryzmu', (2001) 9 Wspólnoty Europejskie 70.

⁴⁰ F Jasiński, 'Europejski Nakaz Aresztowania' (2003) 3-4 Stosunki Międzynarodowe 51.

⁴¹ Jasiński (n 40) 46. Instituted action plan also refers to the issue of fighting global terrorism. More on this topic: R Dziwulski, 'Nadzwyczajne posiedzenie Rady Europejskiej w Brukseli (21 września 2001) – odpowiedź Unii Europejskiej na zagrożenie terroryzmem' (2001) 7 Biuletyn Analiz Urzędu Komitetu Integracji Europejskiej' 4; F Jasiński, 'Unia Europejska wobec terroryzmu' (2002) 3 Sprawy Międzynarodowe 46; F Jasiński, 'Polityka antyterrorystyczna Unii Europejskiej po 11 marca 2004 roku' (2004) 1 Sprawy Międzynarodowe 56.

⁴² More information on the genesis of the Framework Decision Jasiński, 'Europejski Nakaz Aresztowania' (n 40) 63 – 64.

⁴³ OJ L 190/1. According to J Monar adoption of the Framework Decision on the EAW was the result of pressure from the European Council meeting in Ghent 19. 10. 2001. See J Monar, 'Decision – making In the Area of Freedom, Security, and Justice' in A Arnall, D Wincott, *Accountability and Legitimacy in the European Union* (2002) 69.

⁴⁴ More on the principle of mutual recognition of judgments among others: J Garstka (n 9) 354 – 358. See also Program of measures to implement the principle of mutual recognition in criminal matters, adopted 30.11.2000., OJ 2001 C 12/10.

⁴⁵ Jasiński, 'Europejski Nakaz Aresztowania' (n 40) 64.

⁴⁶ The decision came into force under Art. 35 at the time of its publication, while under the premise in Art. 32, it was to take effect from 1.01.2004 Poland implemented the Framework Decision Act of 18. 03. 2004 Amending the Act of the Penal Code - Code of Criminal Procedure and the Code of offenses; OJ 2004, no 69, item 626.

- European Convention on the Suppression of Terrorism from 1977 (in the part relating to extradition)
- The European Communities Convention on the simplification and modernization of methods of transmitting extradition requests from 1989
- Convention implementing the Schengen Agreement signed in 1990 (Title III, Chapter IV)
- The Convention on simplified extradition procedure between Member States of European Union of 1995
- The Convention on extradition between Member States of the European Union of 1996⁴⁷.

Regulation included in article 31, paragraph 1 of the decision to replace the existing extradition conventions applicable in relations between Member States does not mean, of course, that with the date of entry into force of the decision they lose their legal force. According to paragraph 2, Member States may continue to apply bilateral or multilateral agreements "(...) to the extent of broader and deeper treatment of orders of this Framework Decision and, in the longer term serving to simplify and facilitate the procedures for surrender individuals subjected to European arrest warrant (...)".

A comparative analysis of the regulations contained in the indicated agreements on extradition and the Framework Decision on the EAW, however, leads to the conclusion that contractual arrangements are not able to expand and deepen regulatory framework decision⁴⁸.

At the same time, June 13, 2002, a framework decision of the Council of the European Union on fighting terrorism⁴⁹ was undertaken, which obliges Member States to establish, under its domestic law, standards that will enable the extradition of perpetrators of terrorist acts⁵⁰.

On June 28, 2003, in accordance with the mandate of the Council of 6 June 2003⁵¹, the Treaty on Extradition and Mutual Assistance in Criminal Matters between the European Union and the United States was signed⁵². The Treaty aims to strengthen cooperation between the parties in relation to extradition relations between Member States of European Union and the United States. The regulations of this Treaty modify the regulations

⁴⁷M. Płachta, 'Europejski nakaz aresztowania (wydania): kłopotliwa „rewolucja” w ekstradycji' (2000) 3 *Studia Europejskie* 61.

⁴⁸More on the subject see P. Hofmański, A. Sakowicz, 'Reguły kolizyjne w obszarze międzynarodowej współpracy w sprawach karnych' (2006) 11 *Państwo i Prawo* 33.

⁴⁹OJ 2002 L 164/3.

⁵⁰See K. Liedel, 'Współpraca międzynarodowa w zwalczaniu terroryzmu' (2004) 2 *Jurysta* 17 – 20. More on the subject of fighting terrorism in Europe among others: A. Vercher, *Terrorism in Europe: an international comparative legal analysis* (1992); F. Reinares, *European democracies against terrorism: governmental policies and intergovernmental cooperation* (2000); M. Leeuwen (ed), *Confronting terrorism: European experiences, threat perceptions and policies* (2003), S. Peers, 'EU responses to terrorism' (2003) 1 *ICLQ* 227.

⁵¹Council Decision 2003/516/EC of 6. 06. 2003 On the signing of agreements between the European Union and the United States on extradition and mutual assistance in criminal matters, OJ 2003 L 181/ 25.

⁵²OJ 2003 L 181/25.

contained in bilateral agreements on extradition applicable to relations with the United States⁵³. The Treaty also included regulations with regard to the concept of extraditable offences, rules for the transfer and authentication of documents, temporary extradition, multiple requests for extradition, transit rules and the death penalty. The Parties also agreed to make a joint review on the implementation of the Treaty, not later than five years from the date of its entry into force⁵⁴.

Council Decision 2009/933 / CFSP dated 30 November 2009 on the extension, on behalf of the European Union, the territorial scope of the Agreement on extradition between the European Union and the United States of America⁵⁵, increased the territorial scope of the said contract to the Dutch Antilles and Aruba⁵⁶.

On 28 June 2006 the Agreement was concluded between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway⁵⁷. The model simplifies procedures for issuing, adopted in the agreement and broadly corresponds to the European arrest warrant, although to some extent forms of cooperation are not as advanced as in the Framework Decision on the EAW from 2002. The scope of the Agreement is narrowed compared to the European arrest warrant by introducing, with a few exceptions, the possibility of checking dual criminality, making statements about the refusal to execute the European arrest warrant because of the political nature of the crime (except for crimes of a terrorist nature), making statements about the lack of obligation of executing the order in relation to its own citizens and the ability of citizens to refuse transit through the territory of their own state⁵⁸. Although there are no significant differences in the content of this Agreement, to a large extent it reproduces the regulations of the Framework Decision on the European arrest warrant of 2002 thanks to which a model of extradition relations based on the European Arrest Warrant, which previously had applicable only between the Member States of the European Union can also be implemented in relations with Iceland and Norway⁵⁹.

Fulfillment of the regulations contained in the decision on the EAW of 2002 are regulations in the legislation of the European Union, which specify minimum standards, among others, about the rights of suspects and

⁵³ See art. 3 Of Treaty on Extradition between the European Union and the United States from 6.06.2003: OJ 2003, no. L 181/ 27. Cf. V Mitsilegas, 'The New EU – USA Cooperation on Extradition, Mutual Legal Assistance and the Exchange of Police Data' (2003) 8 European Foreign Affairs Review 515 and T Georgopoulos, 'What kind of treaty – making power for the EU? Constitutional problems related to the conclusion of the EU – US Agreements on Extradition and Mutual Legal Assistance' (2005) 2 European Law Review 190.

⁵⁴ R Kmiecik, A Przyborowska – Klimczak, 'Prawo ekstradycyjne Unii Europejskiej' in L Leszczyński (ed), *Prawne problemy członkostwa Polski w Unii Europejskiej* (2005) 218.

⁵⁵ OJ 2009 L 325/4 - 5.

⁵⁶ Cf art. 1 Decision, OJ 2009 L 325/4.

⁵⁷ OJ 2006 L 292/2.

⁵⁸ Cf n 57 2.

⁵⁹ OJ 2006 L 292/2.

accused individuals under investigation concerning the European arrest warrant arising from the right to a fair trial.

The first act of this type is the Council Framework Decision of 26 February 2009, amending Framework Decisions 2002/584 / JHA, 2005/214 / JHA, 2006/783 / JHA, 2008/909 / JHA, 2008/947 / JHA, thereby enhancing the rights of individuals and fostering the application of the principle of mutual recognition to decisions judged in the absence of person at the trial, whose main objective is to clarify the basis for making the decision despite the absence of the person at the trial⁶⁰. The decision constitutes the inadmissibility of refusal to execute a European arrest warrant issued for the purpose of executing a custodial sentence or detention order for a hearing at which the individual concerned fails to appear in person, after fulfilling described the terms of its content⁶¹.

The second supplementary act of decision on the EAW of 2002 is the Directive of the European Parliament and the Council 2010/64 / EU of 20 October 2010 about the right to having an interpreter and written translation during criminal proceedings⁶². The Directive clarifies the rules on the right to an interpreter and written translation in proceedings for the execution of a European Arrest Warrant⁶³.

Another such act is Directive of the European Parliament and the Council 2012/13 / EU of 22 May 2012 about the right to information in criminal proceedings⁶⁴. The Directive regulates the rights of individuals subjected to a European arrest warrant for prompt and adequate instruction about their rights, under national law, implementing the EAW of 2002 in the executing Member State⁶⁵.

One of the last sources containing norms of EU extradition law in terms of minimum standards under the law to a fair trial is the Directive of the European Parliament and the Council 2013/48 / EU of 22 October 2013 on the right to a lawyer in criminal proceedings and in proceedings relating to the European Arrest Warrant and on of the right to inform a third party of deprivation of liberty and the right to communicate with third parties and consular authorities during imprisonment⁶⁶. It defines the scope of the right of access to a lawyer and represents the obligation to guarantee this right in a manner and time to allow the effective execution of rights. It also clarifies the right to meet and communicate with a lawyer and the right to the

⁶⁰ OJ 2009 L 81/24. Implementation of the agreements of that decision to the internal legal order of the Republic of Poland was under Polish Act dated 29 July 2011 Amending the Act of the Penal Code- Code of Criminal Procedure and the Law on liability of collective entities for acts prohibited under penalty, OJ 2011, no 191, item 1135.

⁶¹ Cf art. 2 of decision, OJ 2009L 81/26. See also L Brodowski, 'Ewolucja instytucji ekstradycji w prawie Unii Europejskiej', in L Brodowski, D Kuźniar - Kwiatek (eds), *Unia Europejska a Prawo Międzynarodowe. Księga jubileuszowa dedykowana Prof. Elżbiecie Dyni* (2015) 24 - 25.

⁶² OJ 2010 L 280/1.

⁶³ Cf art. 1 - 3 of directive (n 62).

⁶⁴ OJ 2012 L 142/1.

⁶⁵ Cf art. 5 of directive (n 64). The implementation of the standards contained in the directive to the Polish domestic legal order through the power of the Minister of Justice from 11 June 2015 on determining the of the model instructions on the powers of a retained on the basis of a European Arrest Warrant, Dz. U. 2015, item 874.

⁶⁶ OJ 2013 L 294/1.

presence and participation of a lawyer during interrogation by the executing judicial authority, while maintaining the confidentiality of communication between the suspects and the accused and their lawyers⁶⁷.

Analyzed Acts clarify the standards for the decision on the EAW of 2002 thus strengthening the procedural guarantees of individuals in proceedings on the European arrest warrant and facilitate the application of the principle of mutual recognition.

CONCLUSIONS

To summarize the above discussion, it should be noted that within the European Union, a coherent system of co-ordinated regulations allowing for cooperation of the judicial authorities of each Member Country⁶⁸ was developed. EU extradition law in the last decade was a subject to significant evolution to reflect the changes made in primary law international agreements and the Acts signed by the institutions of the European Union⁶⁹. The main factor affecting the intensification of the activities of the Member States of the European Union, aiming to produce a coherent and effective system to combat crime, was the lack of sufficient capacity on the side of the Council of Europe, enabling the effective elimination of the risks arising from the internationalization of crime, the cause of which, according to P. Hofmański, lies in the diversity of countries under terms of relation to democratic traditions, resulting in the lack of mutual trust⁷⁰. On the European continent, the extradition system in the recent years, has been based on the European Convention on Extradition of 13 December 1957, which reflected all the rules and obstacles to extradition, in their classic, traditional, but unfortunately incoherent state to the current development of social recognition⁷¹. The situation was not improved by adoption of the two Additional Protocols of 15 October 1975 and of 17 March 1978⁷². Consequently, issues related to the modernization of the institution of extradition began to be a major subject of discussion in the European Union. Independently from the Council of Europe system, within the European Union a regulatory system was designed to increase the efficiency of the fight against crime and therefore improve and enhance the effectiveness of extradition.

The primary source of extradition law within the EU legal system as an instrument comprehensively regulating the issues of extradition between

⁶⁷ Cf art. 3 – 10 (n 6).

⁶⁸ More on the subject P Hofmański, 'Przyszłość ścigania karnego w Europie' (2006) 12 Europejski Przegląd Sądowy 5 – 11; J Dieckman, 'Europäische Kooperation im Bereich der Strafrechtspflege – Bestandaufnahme und Ausblick' (2001) 12 Neue Zeitschrift für Strafrecht 617.

⁶⁹ R Kmieciak, A Przyborowska – Klimczak (n 54) 207 – 208.

⁷⁰ P Hofmański (n 68) 6.

⁷¹ More about the Convention see i.e. Z Knypl, *Ekstradycja, jako instytucja prawa międzynarodowego i wewnętrznego*, Warszawa 1975; Z Knypl, 'Komentarz do Europejskiej Konwencji o ekstradycji' in E Zielińska (ed), *Standardy prawne Rady Europy. Teksty i Komentarze, Tom III - Prawo karne* (1997) 212 - 251.

⁷² More on the subject i.e. L Brodowski (n 61) 18 - 21.

Member States is the analyzed above Framework Decision on the EAW from 2002, which is currently the most modern measure, which definitely improved cooperation between Member States of the European Union⁷³ and it has been operating in all of the legal systems of the Member States⁷⁴. The regulations of this instrument led to the elimination of most of the barriers that impede the effective extradition cooperation. The Reports of the European Commission dated 23 February 2005, 24 January 2006 and 11 April 2011 regarding the implementation of the Framework Decision on the EAW from 2002 stated that, after overcoming initial difficulties in implementing the rules, the European arrest warrant is now widely used, and general trends that can be observed, demonstrate the effectiveness of the transfer on the basis of the warrant⁷⁵.

It should be stressed that law instruments developed within the European Union became a model and an impulse for action to simplify and accelerate the extradition procedure undertaken under the auspices of the Council of Europe, which resulted in the adoption, on 10 November 2010 in Strasbourg, of The Third Additional Protocol to the European Convention on Extradition and the Fourth Additional Protocol to the European Convention on Extradition on 20 September 2012 in Vienna.

⁷³ More on the subject see i.e. L Brodowski (n 61) 22 - 25.

⁷⁴ See the report of the Commission of 23. 02. 2005. Based on Article 34 of the Council Framework Decision of 13. 06. 2002 on a European arrest warrant and the extradition procedures between Member States [COM (2005) 63 final version - Not published in the Official Journal], available on EUR - Lex - 52005DC0063 - EN (access: 02. 02. 2015.); The report of the Commission of 24. 01. 2006. Based on Article 34 of the Council Framework Decision of 13. 06. 2002 on the European arrest warrant and extradition procedures between Member States (revised version) [COM (2006) 8 final version - not published in the Official Journal], available on EUR - Lex - 52006DC0008 - EN (access 02. 02. 2015 r.) and the Report from the Commission European Parliament and Council of 11. 04. 2011 on the implementation since 2007 of the Council Framework Decision of 13. 06. 2002 on the European Arrest Warrant and extradition procedures between Member States [COM (2011) 175 final English version, officially - not published in the Official Journal], available on EUR - Lex - 52011DC0175 - EN (access: 02. 02. 2015) See also the House of Lords European Union Committee, the European Arrest Warrant - Recent Developments Report with Evidence, "the House of Lords Paper" 2006, no. 156, 5.

⁷⁵ Cf the text of the Report of the Commission of 23.02 2005, Available on EUR - Lex - 52005DC0063 - EN (access: 02. 02. 2015); Report of the Commission of 24. 01. 2006, Available on EUR - Lex - 52006DC0008 - EN (access: 02. 02. 2015) and the Report of the Commission of dated 11. 04. 2011, available at on EUR - Lex - 52011DC0175 - EN (access: 02. 02. 2015). See also a statement of A Adamiak - Derendarz, then the National Prosecutor in A Łukaszewicz, *Europejski nakaz pożyteczny*, "Rzeczpospolita" 2005, no. 122/C3. Poland is the undisputed leader in the number of issued European arrest warrants, see P Kacak, *Sądy orzekają, Policja płaci*, "Policja 997" 2013, no. 102/09, article available at: <http://www.gazeta.policja.pl/997/archiwum-1/2013/numer-102-092013/89821,Nr-102-092013.html> (access: 22. 04. 2015). Cf also T Gardocka, *Europejski nakaz aresztowania. Analiza polskiej praktyki występowania do innych państw Unii Europejskiej z wnioskiem o wydanie osoby trybem europejskiego nakazu aresztowania* (2011) 21 – 39.

References

Allegre S, Leaf M, 'Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study – the European arrest Warrant', (2004) *European Law Journal* 202.

Amin SM, *Współpraca w zakresie wymiaru sprawiedliwości i spraw wewnętrznych w Unii Europejskiej. Zarys zagadnienia* (2002)

Banach – Gutierrez J, 'Rozwój współpracy sądowej w sprawach karnych państw Unii Europejskiej' (2004) 10 *Jurysta* 8.

Brodowski L, 'Ewolucja instytucji ekstradycji w prawie Unii Europejskiej', in L Brodowski, D Kuźniar - Kwiatek (eds), *Unia Europejska a Prawo Międzynarodowe. Księga jubileuszowa dedykowana Prof. Elżbiecie Dyni* (2015) 24.

Czapliński W, 'III filar Unii Europejskiej – Współpraca Sądowa i Policji w Sprawach Karnych' in J Barcz (ed), *Prawo Unii Europejskiej. Zagadnienia systemowe. Prawo materialne i polityki. Omówienie wybranych orzeczeń ETS. Traktat o Unii Europejskiej. Traktat ustanawiający Wspólnotę Europejską* (2004) 139.

Czapliński W, *Obszar wolności bezpieczeństwa i sprawiedliwości. Współpraca w zakresie wymiaru sprawiedliwości i spraw wewnętrznych* (2005).

Dieckman J, 'Europäische Kooperation im Bereich der Strafrechtspflege – Bestandaufnahme und Ausblick' (2001) 12 *Neue Zeitschrift für Strafrecht* 617.

Durys P, Jasiński F, *Walka z terroryzmem międzynarodowym. Wybór dokumentów* (2001).

Durys P, Jasiński F, 'Zwalczanie terroryzmu w ramach Unii Europejskiej' (2000) 6 *Wspólnoty Europejskie* 38.

Dziewulski R, 'Nadzwyczajne posiedzenie Rady Europejskiej w Brukseli (21 września 2001) – odpowiedź Unii Europejskiej na zagrożenie terroryzmem' (2001) 7 *Biuletyn Analiz Urzędu Komitetu Integracji Europejskiej* 4.

Elsen C, 'Incorporation juridique et institutionnelle de Schengen dans l'UE' in M Boer (ed.), *Schengen Still Going Strong. Evaluation and Update* (2000) 11.

Fenelly N, 'The Area of „Freedom, Security and Justice” and the European Court of Justice-a Personal View' (2000) *International and Comparative Law Quarterly* 1.

Gardocka T, *Europejski nakaz aresztowania. Analiza polskiej praktyki występowania do innych państw Unii Europejskiej z wnioskiem o wydanie osoby trybem europejskiego nakazu aresztowania* (2011) 21.

Garstka J, 'Współpraca w sprawach karnych' in F Jasiński, K Smoter, *Obszar wolności, bezpieczeństwa i sprawiedliwości Unii Europejskiej. Geneza, stan i perspektywy rozwoju* (2005) 343.

Georgopoulos T, 'What kind of treaty – making power for the EU? Constitutional problems related to the conclusion of the EU – US Agreements on Extradition and Mutual Legal Assistance' (2005) 2 *European Law Review* 190.

Gruszczak A, 'Historia współpracy w dziedzinie wymiaru sprawiedliwości i spraw wewnętrznych: od TREVI do Tampere' in F Jasiński, K Smoter, *Obszar wolności, bezpieczeństwa i sprawiedliwości Unii Europejskiej. Geneza, stan, perspektywy rozwoju* (2005) 30.

Gruszczak A, *Unia Europejska wobec przestępczości* (2002).

Grzelak A, *Unia Europejska a prawo karne* (2002).

Hofmański P, 'Przyszłość ścigania karnego w Europie' (2006) 12 Europejski Przegląd Sądowy 5.

Hofmański P, Sakowicz A, 'Reguły kolizyjne w obszarze międzynarodowej współpracy w sprawach karnych' (2006) 11 Państwo i Prawo 33.

Jasiński F, 'Europejski Nakaz Aresztowania' (2003) 3-4 Stosunki Międzynarodowe 51.

Jasiński F, 'Polityka antyterrorystyczna Unii Europejskiej po 11 marca 2004 roku' (2004) 1 Sprawy Międzynarodowe 56.

Jasiński F, 'Unia Europejska wobec terroryzmu' (2002) 3 Sprawy Międzynarodowe 46.

Jasiński F, 'Unia Europejska wobec zjawiska terroryzmu', (2001) 9 Wspólnoty Europejskie 70.

Jasiński F, Smoter K, *Obszar wolności, bezpieczeństwa i sprawiedliwości Unii Europejskiej. Geneza, stan, perspektywy rozwoju* (2005).

Kacak P, *Sądy orzekają, Policja płaci, "Policja 997"* 2013, no. 102/09.

Kamiński IC, *Unia Europejska. Podstawowe akty prawne* (2nd ed. 2005).

Kmiecik R, Przyborowska – Klimczak A, 'Prawo ekstradycyjne Unii Europejskiej' in L Leszczyński (ed), *Prawne problemy członkostwa Polski w Unii Europejskiej* (2005) 218.

Knypl Z, *Ekstradycja, jako instytucja prawa międzynarodowego i wewnętrznego* 1975.

Knypl Z, 'Komentarz do Europejskiej Konwencji o ekstradycji' in E Zielińska (ed), *Standardy prawne Rady Europy. Teksty i Komentarze, Tom III - Prawo karne* (1997) 212.

Kuczyński K, 'Znaczenie Europejskiego Nakazu Aresztowania w zwalczaniu terroryzmu w Unii Europejskiej', (2005) 1 Studia Europejskie 63.

Leeuwen M (ed), *Confronting terrorism: European experiences, threat perceptions and policies* (2003).

Liedel K, 'Współpraca międzynarodowa w zwalczaniu terroryzmu' (2004) 2 Jurysta 17

Łukaszewicz A, 'Europejski nakaz pożyteczny' (2005) 122 Rzeczpospolita C3.

Mik C, *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki* (2000).

Mitsilegas V, 'The New EU – USA Cooperation on Extradition, Mutual Legal Assistance and the Exchange of Police Data' (2003) 8 European Foreign Affairs Review 515.

Monar J, 'Decision – making In the Area of Freedom, Security, and Justice' in A Arnall, D Wincott, *Accountability and Legitimacy in the European Union* (2002) 69.

Mozgawa M, 'Ekstradycja i jej substytuty. Zarys problematyki' (2008) 3 *Wojskowy Przegląd Prawniczy* 41.

Peers S, 'EU responses to terrorism' (2003) 1 *ICLQ* 227.

Płachta M, 'Europejski nakaz aresztowania (wydania): kłopotliwa „rewolucja” w ekstradycji' (2000) 3 *Studia Europejskie* 61.

Płachta M, 'Recent Developments in the Extradition Law Within the European Union, and the New Polish Domestic Legislation' (1998) 2 *Yearbook of Polish European Studies* 95.

Płachta M, 'Zagadnienia ekstradycyjne w prawie polskim' (1999) 2 *Studia Europejskie* 73.

Przyjemski S, *Prawo Wspólnot Europejskich a prawo polskie. Prawo karne* (1997).

Reinares F, *European democracies against terrorism: governmental policies and intergovernmental cooperation* (2000).

Rokicka K, 'Włączenie *acquis* Schengen w ramy prawne Unii Europejskiej' (2000) 2 *Studia Europejskie* 79.

Staszewski WSz, 'Swoboda przepływu osób w prawie pierwotnym Wspólnot Europejskich' in J Menkes (ed), *Prawo międzynarodowe – problemy i wyzwania. Księga pamiątkowa Profesor Renaty Sonnenfeld – Tomporek* (2006) 498.

Vercher A, *Terrorism in Europe: an international comparative legal analysis* (1992).

Wierzbicki B, *O azylantach i ekstradycji przestępców* (1982).

Zielińska E (ed), 3 *Prawo Wspólnot Europejskich a prawo polskie. Dokumenty karne* (2000).

Zięba – Załucka H, 'Instytucja ekstradycji w prawie konstytucyjnym i międzynarodowym' in E Dynia (ed), *Nauka prawa międzynarodowego u progu XXI wieku, Materiały pokonferencyjne* (2003) 260.