

IMPLEMENTATION OF THE GROUNDS FOR NON-EXECUTION THE EUROPEAN ARREST WARRANT: *LEX FERENDA* TOWARDS THE ACT NO. 154/2010 COLL. ON THE EUROPEAN ARREST WARRANT

Libor Klimek*

Abstract: *The paper deals with the implementation of the grounds for non-execution the European arrest warrant in the Slovak Republic. It is divided into four sections. While the first section deals with the mandatory grounds, the second section deals with the optional grounds. The third section analyses their implementation in the Slovak Republic and solves the question whether all 'Slovak mandatory grounds for non-execution the European arrest warrant' are really mandatory. The last fourth section introduces author's considerations *lex ferenda* towards Slovak Act No. 154/2010 Coll. on the European Arrest Warrant.*

Keywords: *European arrest warrant, grounds for non-execution, implementation, Slovak Act No. 154/2010 Coll. on the European Arrest Warrant*

INTRODUCTION

While the system established by the Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States¹ (hereinafter 'Framework Decision 2002/584/JHA on the European arrest warrant') is based on the principle of mutual recognition², that recognition does not mean that there is an absolute obligation to execute the European arrest warrant that has been issued.³ In principle, the obligation to execute the European arrest warrant has been accepted and implemented. In addition, some Member States of the European Union have made direct reference to the mutual recognition principle, namely Spain, Latvia, Austria, Portugal, Slovenia and the Slovak Republic^{4,5}.

However, the Framework Decision 2002/584/JHA on the European arrest warrant includes sets of grounds for non-execution of surrender request that can be referred to by

* Dr. et JUDr. Libor Klimek, PhD., Criminology Research Centre, Faculty of Law, Pan-European University, Bratislava, Slovak Republic

¹ Council Framework Decision 2002/584/JHA of 13th June 2002 on the European arrest warrant and the surrender procedures between Member States as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Communities, L 190/1 of 18. 7. 2002.

² Article 82(1) of the Treaty on the functioning of the European Union as amended by the Treaty of Lisbon. OJ C 83-47 of 30.3.2010; details see: KLIMEK, L. *European Arrest Warrant*. Cham – Heidelberg – New York – Dordrecht – London: Springer, 2015, p. 68 et seq.

³ Judgment of the Court of Justice of the European Union of 21st October 2010 – Case C-306/09 – *I.B.*, para. 50; Judgment of the Court of Justice of the European Union of 28th June 2012 – Case C-192/12 PPU – *Melvin West*, para. 64.

⁴ As far as the Slovak Republic is concerned, see the Act of the National Council of the Slovak Republic of 9th March 2010 No. 154/2010 Coll. on the European Arrest Warrant [Slovak: Zákon Národnej rady Slovenskej republiky zo dňa 9. marca 2010 č. 154/2010 Z. z. o európskom zatýkacom rozkaze]; see also: KLIMEK, L. New Law on the European Arrest Warrant in the Slovak Republic: Does it fulfil Standards at the Level of the EU? *European Journal of Crime, Criminal Law and Criminal Justice*. 2012, Vol. 20, No. 2, pp. 181–192.

⁵ Commission of the European Communities: 'Annex to the Report from the Commission on the implementation since 2005 of the Council Framework Decision of 13th June 2002 on the European arrest warrant and the surrender procedures between Member States', Commission staff working document, SEC(2007) 979, pp. 4 and 5.

the executing State. In addition to that, it includes special provisions on non-execution the European arrest warrant. A significant difference between the traditional processes of extradition between Member States before the implementation of the Framework Decision 2002/584/JHA on the European arrest warrant is that there is limited number of the grounds for a refusal to surrender. In case of surrender procedure, grounds for non-execution the European arrest warrant can be divided into four groups, namely mandatory non-execution⁶, optional non-execution⁷, decisions '*in absentia*'⁸, and special situations⁹.

The contribution is divided into four sections. While the first section deals with the mandatory grounds for non-execution the European arrest warrant, the second section deals with the optional grounds. The third section analyses their implementation in the Slovak Republic and solves the question whether all 'Slovak mandatory grounds for non-execution the European arrest warrant' are really mandatory. The last fourth section introduces author's considerations *lex ferenda* towards the Act No. 154/2010 Coll. on the European Arrest Warrant.

1. MANDATORY GROUNDS FOR NON-EXECUTION THE EUROPEAN ARREST WARRANT

The Framework Decision 2002/584/JHA on the European arrest warrant provides mandatory grounds for non-execution the European arrest warrant. Its scope is limited to three grounds. The executing judicial authority shall refuse to execute the European arrest warrant in the following cases (mandatory non-execution pursuant to the wording 'shall refuse'):¹⁰

1. amnesty,
2. the requested person has been finally judged by a Member State in respect of the same acts (the 'first' principle of *ne bis in idem*; another see below), and
3. the requested person may not, owing to his or her age, be held criminally responsible for the act(s) on which the European arrest warrant is based.

Ad 1) The first mandatory ground for non-execution the European arrest warrant is the amnesty. The executing judicial authority shall refuse to execute the European arrest warrant if *the offence on which the European arrest warrant is based is covered by amnesty in the executing Member State*, where that State had jurisdiction to prosecute the offence under its own criminal law.¹¹

Logically, amnesty as mandatory exception is only applicable if the executing State has jurisdiction. Problems may arise however concerning the meaning of amnesty in this context. The word amnesty is generally used in various meanings. It may cover the case where a specific type of offence committed in the past is pardoned systematically, but it may also refer to a ruling by which several offenders are pardoned while others are not, with all sorts

⁶ Article 3 of the Framework Decision 2002/584/JHA on the European arrest warrant.

⁷ Article 4 of the Framework Decision 2002/584/JHA on the European arrest warrant.

⁸ Article 4a of the Framework Decision 2002/584/JHA on the European arrest warrant.

⁹ Recitals 12 and 13 of the Framework Decision 2002/584/JHA on the European arrest warrant.

¹⁰ Article 3 of the Framework Decision 2002/584/JHA on the European arrest warrant.

¹¹ Article 3(1) of the Framework Decision 2002/584/JHA on the European arrest warrant.

of definitions as to what is what. Moreover, the word amnesty is also used to describe rebates for sentences already served.¹²

Ad 2) Further, the executing judicial authority shall refuse to execute the European arrest warrant if the executing judicial authority is informed that *the requested person has been finally judged by a Member State in respect of the same acts* provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State.¹³ The provision is an expression of the principle of *ne bis in idem*. It should be emphasised that in the case of *Mantello*¹⁴ the Court of Justice of the European Union ruled that *for the purposes of the issue and execution of a European arrest warrant, the concept of 'same acts' [...] constitutes an autonomous concept of European Union law*.¹⁵

Having regard the fact that the principle of *ne bis in idem* is used as a ground for non-execution of the European arrest warrant in four cases (one case as mandatory ground and three cases as optional ground – see below), it is worthy of further analysis.

The principle expressed by the Latin maxim *ne bis in idem* or *non bis in idem* (or *double jeopardy* in common law jurisdictions), which means *not the same thing twice*, implies that a person cannot be sentenced or prosecuted twice in respect of the same act. This principle features in various different forms in regional and international instruments, offering national, regional, or international protection. It has been established as an individual right in international human rights legal instruments. As pointed out by *Bot*, when society has exercised its legitimate right to punish the perpetrator of an offence contrary to its rules, it has exhausted its right to prosecute. Therefore it has no further authority to punish a person already convicted in respect of that act. That principle is therefore inseparable from the principle of *res judicata*. Considered at the level of the individual, the *ne bis in idem* principle is intended to provide a convicted person with a guarantee that, when has served sentence, has 'paid his debt' to society and can therefore regain his place in it without having to fear further prosecution.¹⁶

The principle of *ne bis in idem* is one of the oldest recognised norms in western civilisation. Its origins trace back to Biblical, Greek and Roman sources. Nowadays, it is reflected in the major international documents. The atrocities of the World War II called for the adoption of specific and essentially intangible rules aimed at preventing the repetition of similar events in the future.¹⁷ In relation to the European dimension, attention should be

¹² BLEKXTOON, R. *Commentary on an Article by Article Basis*. In: BLEKXTOON, R. et Van BALLEGOOIJ, W. (eds.). *Handbook on the European Arrest Warrant*. The Hague: T. M. C. Asser Press, 2005, p. 233.

¹³ Article 3(2) of the Framework Decision 2002/584/JHA on the European arrest warrant.

¹⁴ Judgment of the Court of Justice of the European Union of 16th November 2010 – Case C-261/09 – *Gaetano Mantello*.

¹⁵ Details see: KLIMEK, L. *European Arrest Warrant*. Cham – Heidelberg – New York – Dordrecht – London: Springer, 2015, p. 225 et seq.

¹⁶ Opinion of Advocate General Yves Bot – Case C-261/09 – *Criminal proceedings against Gaetano Mantello*, paras 26 and 27.

¹⁷ Di FEDERICO, G. *Fundamental Rights in the EU: Legal Pluralism and Multi-Level Protection After the Lisbon Treaty*. In: Di FEDERICO, G. (ed.). *The EU Charter of Fundamental Rights: From Declaration to Binding Document*. Dordrecht – Heidelberg – London – New York: Springer, 2011, p. 16.

drawn to the leading international documents containing the provisions on the principle of *ne bis in idem*, namely the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁸, the Charter of Fundamental Rights of the European Union¹⁹, or the Convention implementing the Schengen Agreement^{20, 21}.

Advocate General Bot argues that the precise meaning of the *ne bis in idem* principle is *hard to define*. It may vary very considerably from one European Union Member State to another. The differences may relate to both the elements governing application of that principle, namely *bis* and *idem*. The concept of *bis* is used in determining the decisions to which the principle may be applied. The concept of *idem* relates to the elements which must be regarded as having already formed the subject-matter of a judgment. This may, understood in a manner which is advantageous to the individual, include *identity solely of the material acts* or, with a stricter meaning, *identity of the offences*, that is to say those acts together with their legal classification.²²

While the application of the *ne bis in idem* principle may be difficult in domestic settings, problems are likely to multiply in an international context, because States foster different interpretations of the principle.²³ In case of the European arrest warrant there is possible application at least of three legal orders – the legal order of the State issuing the European arrest warrant, the legal order of the State executing the European arrest warrant and the European Union law. A question which begs consideration is whether a person has been ‘finally’ judged for purposes of the European arrest warrant. The Court of Justice of the European Union argued in the case of *Mantello*²⁴ that a requested person is considered to have been finally judged in respect of the same acts where further prosecution is definitively barred or where the judicial authorities of a Member State have adopted a decision by which the accused is finally acquitted in respect of the alleged acts. Whether a person has been ‘finally’ judged for the purposes European arrest warrant is determined by the law of the Member State in which judgment was delivered. It should be emphasised the Court ruled that *for the purposes of the issue and execution of a European arrest warrant, the concept of ‘same acts’ [...] constitutes an autonomous concept of European Union law*.²⁵

¹⁸ Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe, European Treaty Series No. 117 [1984]. Strasbourg, 22nd November 1984.

¹⁹ Charter of Fundamental Rights of the European Union. Official Journal of the European Union, C 83/389 of 30. 3. 2010.

²⁰ Convention implementing the Schengen Agreement of 14th June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. Official Journal of the European Communities, L 239/19 of 22. 9. 2000.

²¹ Details see: KLIMEK, L. Transnational Application of the *Ne bis in idem* Principle in Europe. *Notitiae ex Academia Bratislavensi Iurisprudentiae*. 2011, Vol. 5, No. 3, pp. 12–33.

²² Opinion of Advocate General Yves Bot – Case C-261/09 – *Criminal proceedings against Gaetano Mantello*, paras 36, 37 and 39; analysis of the elements *bis* and *idem* see CIMAMONTI, S. European Arrest Warrant in Practice and *Ne Bis in Idem*. In: KEIJYER, N. et Van SLIEDREGT, E. (eds.). *The European Arrest Warrant in Practice*. The Hague: T. M. C. Asser Press, 2009, p. 118 et seq.; or Van BOCKEL, B. *The ne bis in idem Principle in EU Law*. Alphen aan den Rijn: Kluwer Law International, 2010, p. 41 et seq.

²³ Van der WILT, H. The European Arrest Warrant and the Principle *Ne Bis in Idem*. In: BLEKXTOON, R. et Van BALLEGOIJ, W. (eds.). *Handbook on the European Arrest Warrant*. The Hague: T. M. C. Asser Press, 2005, p. 103.

²⁴ Judgment of the Court of Justice of the European Union of 16th November 2010 – Case C-261/09 – *Gaetano Mantello*.

Last, but not least, the executing judicial authority shall refuse to execute the European arrest warrant if *the person who is the subject of the European arrest warrant may not, owing to age, be held criminally responsible for the acts on which the European arrest warrant is based under the law of the executing State*.²⁶ However, the Framework Decision 2002/584/JHA on the European arrest warrant does not specify the lower or upper limits of person's age. The age of criminal responsibility is anchored in domestic criminal codes of the Member States. This matter is based on their national traditions.

2. OPTIONAL GROUNDS FOR NON-EXECUTION THE EUROPEAN ARREST WARRANT

Besides the mandatory grounds for non-execution the European arrest warrant, the Framework Decision 2002/584/JHA on the European arrest warrant introduced also optional grounds. The executing judicial authority may refuse to execute the European arrest warrant (optional non-execution pursuant to the wording 'may refuse') in case of:²⁷

1. the absence of the dual criminality,
2. the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based (the 'second' principle of *ne bis in idem*),
3. the executing judicial authorities have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or a final judgment has been passed (the 'third' principle of *ne bis in idem*),
4. the criminal prosecution or punishment is statute-barred,
5. the requested person has been finally judged by a third State in respect of the same acts (the 'fourth' principle of *ne bis in idem*),
6. the executing State undertakes to execute the sentence or detention order, and
7. the lack of jurisdiction.

Ad 1) The first optional ground for non-execution the European arrest warrant is the absence of the dual criminality. The executing judicial authority may refuse to execute the European arrest warrant *if the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State*.²⁸

However, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State. The rules concerning tax offences are logical. They exist as well in the extradition procedure.²⁹

²⁵ Details see: KLIMEK, L. *European Arrest Warrant*. Cham – Heidelberg – New York – Dordrecht – London: Springer, 2015, p. 225 et seq.

²⁶ Article 3(3) of the Framework Decision 2002/584/JHA on the European arrest warrant.

²⁷ Article 4 of the Framework Decision 2002/584/JHA on the European arrest warrant.

²⁸ Article 4(1) of the Framework Decision 2002/584/JHA on the European arrest warrant.

²⁹ BLEKXTOON, R. Commentary on an Article by Article Basis. In: BLEKXTOON, R. et Van BALLEGOIJ, W. (eds.). *Handbook on the European Arrest Warrant*. The Hague: T. M. C. Asser Press, 2005, pp. 261–262.

Ad 2) The executing judicial authority may refuse to execute the European arrest warrant where the person who is the subject of the European arrest warrant is *being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based*.³⁰ The provisions reflect the principle of national sovereignty. It is the 'second' ground for non-execution the European arrest warrant based on the principle of *ne bis in idem*.

Ad 3) As the 'third' ground for non-execution the European arrest warrant based on the principle of *ne bis in idem* is the situation, where the judicial authorities of the executing Member State have decided (i) either *not to prosecute* for the offence on which the European arrest warrant is based or (ii) *to halt proceedings*, or (iii) where *a final judgment has been passed* upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings.³¹

Ad 4) The executing judicial authority may refuse to execute the European arrest warrant where *the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State* and the acts fall within the jurisdiction of that Member State under its own criminal law.³² If the offence is statute-bared under its domestic law, the issuing authority does not seek surrender of a person. Thus, only statute-bars of the executing State are relevant.

Ad 5) As the 'fourth' ground for non-execution the European arrest warrant based on the principle of *ne bis in idem* is the situation where the executing judicial authority is informed that *the requested person has been finally judged by a third State* (a non- European Union Member State) *in respect of the same acts* provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country.³³

Ad 6) Further, the executing judicial authority may refuse to execute the European arrest warrant if it has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person *is staying in, or is a national or a resident of the executing Member State* and that State undertakes *to execute the sentence or detention order in accordance with its domestic law*.³⁴ The provisions are the application of the Convention on the Transfer of Sentenced Persons³⁵ of 1983, adopted by the Council of Europe.

As far as the interpretation of the terms 'staying' and 'resident' is concerned, in case of *Kozłowski* the Court of Justice of the European Union ruled that a requested person is 'resident' in the executing Member State when he has established his or her actual place of residence there and he or she is 'staying' there when, following a stable period of presence in that State, he or she has acquired connections with that State which are of a similar degree to those resulting from residence; in addition, in order to ascertain whether there are connections between the requested person and the executing Member State which lead

³⁰ Article 4(2) of the Framework Decision 2002/584/JHA on the European arrest warrant.

³¹ Article 4(3) of the Framework Decision 2002/584/JHA on the European arrest warrant.

³² Article 4(4) of the Framework Decision 2002/584/JHA on the European arrest warrant.

³³ Article 4(5) of the Framework Decision 2002/584/JHA on the European arrest warrant.

³⁴ Article 4(6) of the Framework Decision 2002/584/JHA on the European arrest warrant.

³⁵ Convention on the Transfer of Sentenced Persons. Council of Europe, European Treaty Series No. 112 [1983]. Strasbourg, 21st March 1983.

to the conclusion that that person is covered by the term ‘staying’, it is for the executing judicial authority to make an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State^{36,37}

Ad 7) Last, but not least, the executing judicial authority may refuse to execute the European arrest warrant where it relates to offences which:³⁸

- are regarded by the law of the executing Member State *as having been committed in whole or in part in the territory of the executing Member State* or in a place treated as such, or
- have been committed outside the territory of the issuing Member State and *the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory* (rule of reciprocity).

3. IMPLEMENTATION IN THE SLOVAK REPUBLIC: ARE ALL ‘SLOVAK MANDATORY GROUNDS FOR NON-EXECUTION THE EUROPEAN ARREST WARRANT’ REALLY MANDATORY?

As far as the mandatory grounds for non-execution the European arrest warrant are concerned – amnesty, the principle of *ne bis in idem* and the minority of the requested person – almost all Member States of the European Union have transposed them correctly. As regards the optional grounds for non-execution the European arrest warrant, many Member States have interpreted them as meaning that the State may choose whether a competent authority is required to refuse surrender where one of the grounds exists or whether it has discretion in the matter. As a consequence many States have made these grounds for refusal mandatory. At the same time, because they are optional some Member States have not transposed it at all.³⁹

In case of the Slovak Republic a question which begs consideration is whether all ‘Slovak mandatory grounds for non-execution the European arrest warrant’ are really mandatory. Even though the Framework Decision 2002/584/JHA on the European arrest warrant introduced three mandatory grounds for non-execution of the European arrest warrant, national Slovak legislation implementing the European arrest warrant – the Act No. 154/2010 Coll. on the European Arrest Warrant⁴⁰ – goes beyond limited scope of the Framework Decision.

³⁶ Judgment of the Court of Justice of the European Communities of 17th July 2008 – Case C-66/08 – *Proceedings concerning the execution of a European arrest warrant issued against Szymon Kozłowski*.

³⁷ Details see: KLIMEK, L. *European Arrest Warrant*. Cham – Heidelberg – New York – Dordrecht – London: Springer, 2015, p. 236 et seq.

³⁸ Article 4(7)(a)(b) of the Framework Decision 2002/584/JHA on the European arrest warrant.

³⁹ Details see: KLIMEK, L. *European Arrest Warrant*. Cham – Heidelberg – New York – Dordrecht – London: Springer, 2015, p. 203 et seq.

⁴⁰ Act of the National Council of the Slovak Republic of 9th March 2010 No. 154/2010 Coll. on the European Arrest Warrant [Slovak: Zákon Národnej rady Slovenskej republiky zo dňa 9. marca 2010 č. 154/2010 Z. z. o európskom zatýkacom rozkaze].

The Act No. 154/2010 Coll. on the European Arrest Warrant contains five mandatory grounds of non-execution the European arrest warrant. It stipulates that the execution of the European arrest warrant shall be refused if:⁴¹

- a) the offence on which the European arrest warrant was issued is covered by an amnesty in the Slovak Republic, and under Slovak law the jurisdiction for prosecuting the offence is vested with Slovak authorities,
- b) the executing authority is informed that the proceeding in a Member State against the requested person in respect of the same offence has been terminated by the conviction which has already been executed, is currently being executed, or may no longer be executed under the law of the Member State in which the sentence was pronounced (i.e. the principle of *ne bis in idem*),
- c) under the law of the Slovak Republic the requested person is not criminally liable due to age for the offence on which the European arrest warrant is based,
- d) the offence on which the European arrest warrant is based does not constitute a criminal offence under the law of the Slovak Republic (unless it is an offence set out in selected Articles); in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the grounds that the law of the Slovak Republic does not impose the same kind of tax or duty or does not apply the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State,
- e) the executing judicial authority has decided that criminal prosecution or executing a custodial sentence of the requested person is statute-barred under the law of the Slovak Republic, and the offence falls within the jurisdiction of the Slovak authorities under the law of the Slovak Republic.

It should be noted that under the Framework Decision 2002/584/JHA on the European arrest warrant the aforementioned grounds d) and e) are not mandatory. Under the Framework Decision they are optional grounds for non-execution the European arrest warrant.

The Framework Decision 2002/584/JHA on the European arrest warrant does not include a provision under which the optional grounds for non-execution can become mandatory. As regards the optional grounds, *Alegre* and *Leaf* argue that it is up to each Member State of the European Union to decide whether or not to incorporate all or any into its national implementing legislation.⁴² However, in our opinion it is not true that it is up to each Member State, in this case the Slovak Republic, to incorporate the optional ground (or grounds) into mandatory grounds of non-execution, the scope of which is limited in the Framework Decision. It would be a suitable issue whether such a circumstance is contrary to the Framework Decision, or even contrary to the idea that cases of refusal to execute the European arrest warrant are limited and listed

⁴¹ Article 23(1) of the Act No. 154/2010 Coll. on the European Arrest Warrant (entitled 'Refusal to execute a European arrest warrant').

⁴² See: ALEGRE, S., LEAF, M. *European Arrest Warrant: A solution ahead of its time?* London: Justice, 2003.

in order to simplify and accelerate the procedure (in comparison to extradition procedure).

As pointed out by the European Commission, many Member States have interpreted the provisions on the optional non-execution the European arrest warrant as meaning that the State may choose whether a judge is required to refuse surrender where one of the grounds exists or whether the judge has discretion in the matter. As a consequence, many States have made these grounds for refusal mandatory. At the same time, since the provisions are optional some Member States have not transposed it at all. Hence the implementation of the provisions amounts to *a patchwork which is contrary to the Framework Decision*⁴³ [2002/584/JHA on the European arrest warrant]. In addition, the European Commission highlighted the ‘principal shortcomings’ of the implementation. There is mentioned, among others, alteration of grounds for non-execution from optional to mandatory.⁴⁴

The Court of Justice of the European Union argues that any national provision which limits the optional grounds for non-execution *merely reinforces the system of surrender* introduced by the Framework Decision 2002/584/JHA on the European arrest warrant to the advantage of an Area of Freedom, Security and Justice.⁴⁵

Advocate General Villalón argues that the scant case-law that exists would seem to suggest that the Member States must interpret strictly the optional grounds for non-execution the European arrest warrant.⁴⁶

The Council of the European Union called upon Member States *to review their legislation in order to ensure that only grounds for non-execution permitted under the Framework Decision 2002/584/JHA on the European arrest warrant may be used as a basis for refusal to surrender*.⁴⁷

4. LEX FERENDA TOWARDS THE ACT NO. 154/2010 COLL. ON THE EUROPEAN ARREST WARRANT (CONCLUSION)

In our opinion the Act No. 154/2010 Coll. on the European Arrest Warrant shall follow the Framework Decision 2002/584/JHA on the European arrest warrant. A significant difference between the traditional processes of extradition between Member States before the implementation of the Framework Decision is that there is limited number of the

⁴³ Commission of the European Communities: ‘Annex to the Report from the Commission based on Article 34 of the Council Framework Decision of 13th June 2002 on the European arrest warrant and the surrender procedures between Member States’ (revised version), Commission staff working document, SEC(2006)79, p. 11.

⁴⁴ Commission of the European Communities: ‘Report from the Commission on the implementation since 2005 of the Council Framework Decision of 13th June 2002 on the European arrest warrant and the surrender procedures between Member States’, COM(2007) 407, p. 8.

⁴⁵ Judgment of the Court of Justice of the European Communities of 6th October 2009 – Case C-123/08 – *Dominic Wolzenburg*, para. 58.

⁴⁶ Opinion of Advocate General Pedro Cruz Villalón – Case C-306/09 – *I.B. v Conseil des ministres*, para. 39.

⁴⁷ Council of the European Union: ‘Final report on the fourth round of mutual evaluations – The practical application of the European Arrest Warrant and corresponding surrender procedures between Member States’, document No. 8302/2/09, REV 2, p. 13.

grounds for a refusal to surrender. We consider that it is appropriate that the Slovak national law shall reflect the scope of obligatory grounds for non-execution the European arrest warrant in line with the Framework Decision, because extending its scope tends to lose the innovative philosophy of the European arrest warrant.⁴⁸

⁴⁸ KLIMEK, L. *European Arrest Warrant. Dissertation Thesis*. Bratislava: Faculty of Law, Pan-European University, 2013, p. 422; KLIMEK, L. Európsky zatýkací rozkaz. In: IVOR, J., KLIMEK, L., ZÁHORA, J. *Trestné právo Európskej únie a jeho vplyv na právny poriadok Slovenskej republiky*. Žilina: Eurokódex, 2013, p. 573; KLIMEK, L. Úvahy de lege ferenda k novému slovenskému zákonu o európskom zatýkacom rozkaze. *Trestní právo*. 2011, Vol. 15, No. 7-8, p. 57; KLIMEK, L. Dôvody pre nevykonanie európskeho zatýkacieho rozkazu. *Justičná revue*. 2012, Vol. 64, No. 1, p. 135.