

# The Preconditions for the Admission of the Preventive Measure Based on an European Arrest Warrant

Denisa BARBU<sup>1</sup>,  
Ana Maria PANĂ<sup>2</sup>

<sup>1</sup> Lecturer PhD, Faculty of Law and Administrative Sciences, Valahia University of Targoviste, Romania, [denisa.barbu77@yahoo.com](mailto:denisa.barbu77@yahoo.com)

<sup>2</sup> MA, Faculty of Law and Administrative Sciences, Valahia University of Targoviste, Romania, [anapana17@gmail.com](mailto:anapana17@gmail.com)

**Abstract:** In addition to the mandatory “grounds for refusing to execute an European arrest warrant, the legislator” also provided for some optional grounds on the basis of which the competent judicial bodies “of the executing Member State may refuse to execute an European arrest warrant”. These provisions give the courts of the executing Member State the right to invoke or not to invoke them and, implicitly, the right to execute or not to execute an European arrest warrant. In our view, the refusal to execute the warrant must be complemented by the establishment “of direct links between the judicial authorities of the two Member States”, with regard to adopting a solution to the situation. In this context, given the complexity of the cases, the specific circumstances of the crimes, as well as other elements, the two judicial authorities involved will have to ascertain the incidence of another European institution, namely the transfer of proceedings in criminal matters.

**Keywords:** *admission of a preventive measure, preventive measures, European arrest warrant.*

**How to cite:** Barbu, D., & Pană, A. M. (2021). The Preconditions for the Admission of the Preventive Measure Based on an European Arrest Warrant *Logos Universality Mentality Education Novelty: Law*, 9(1), 42-46. <https://doi.org/10.18662/lumenlaw/9.1/55>

## 1. Introduction

In a case pending before “the High Court Of Cassation and Justice of Romania”, the admission of the appeal was requested, according to art. 109 para. 4 referred to in art. 99 para. 2 letter b related to art. 102 para. 5 letter b of Law no. 302/2004. The appeal requested the court to refuse authorizing handing over the requested person, “to reject the prosecutor's proposal and to authorize the immediate release of the requested person or to institute one of the measures provided by art. 202 para. 4 letter b, c, d of the Criminal Procedure Code for a period of 30 days”. It was alleged that the criminal sentence of the Ploiești Court of Appeal was illegal and unfounded, and, as an alternative, it was proposed to postpone handing over the requested person to the judicial body who requested them until the criminal case pending before the “Directorate for the Investigation of Organized Crime and Terrorism - Dambovitza Territorial Office” would finally be settled. The requested person was a suspect in a criminal investigation pending before the Directorate according to art. 114 para. 1 referred to art. 109 para. 1 and 3 related to art. 58 para. 1 of the Law no. 302/2004.

The sentence of the Ploiesti Court of Appeal was criticized as illegal and unfounded, because the judge failed to verify all the substantive aspects of the European arrest warrant, as provided in art. 87 para. 1 of Law no. 302/2004.

Also, the judge omitted the preliminary verification imposed by the preliminary procedure provided by art. 100 para. 4 and 6 of Law no. 302/2004, respectively: “If, following the verifications, it is found that the requested person is in the territorial district of another prosecutor's office, the prosecutor shall immediately send the European arrest warrant to the competent prosecutor's office and inform the issuing judicial authority and the Ministry of Justice. (...) If the requested person is the subject of an ongoing criminal proceeding for the same acts for which the European arrest warrant was issued, the prosecutor shall send a copy of the European arrest warrant, its translation and, if applicable, the additional information communicated by the issuing judicial authority, for the information of the case prosecutor or the competent court, requesting them to assess and inform as a matter of urgency whether the criminal investigation or trial may be suspended until the case has been resolved by the Romanian executing judicial authority. The provisions of art. 312, art. 313 and, respectively, of art. 367 of the Code of Criminal Procedure shall apply accordingly”. But in the case presented above, the requested person is being investigated together with other defendants/suspects in that case, in Romania.

## 2. “Reasons for refusing to execute a European arrest warrant”

“In addition to the mandatory grounds for refusing to execute an European arrest warrant, the legislator also provided for some optional grounds on the basis of which the competent judicial bodies of the executing Member State may refuse to execute an European arrest warrant” (Komarek, 2007).

In our particular case, we consider that some statements from the analyzed sentence are objectionable, because it is insufficient just to state that none of the reasons for refusing to execute the European arrest warrant were found, because, as shown above and in the following, there were both mandatory and optional grounds for refusal. But, apparently, or probably, this verification was only apparent, slightly respecting the conditions of such verifications on the merits.

These provisions give the courts of the executing Member State the right to invoke or not to invoke them and, implicitly, the right to execute or not to execute an European arrest warrant (Klimek, 2015; Plachta, 2003).

Thus, according to the provisions of the examined normative act, the competent judicial authority from the executing state may refuse the execution of the European arrest warrant, when one or more of the following situations is incurred, provided, in our case, by art. 97 para. 2 letter b of the Law no. 302/2004: “when the requested person is prosecuted in the executing Member State for the same offense underlying the European arrest warrant”.

In these conditions, it was requested to ascertain that the requested person is in the situation provided “by art. 99 para. 2 letter b of the Law no. 302/2004”.

Moreover, in the case of this particular European arrest warrant, the defendant is being prosecuted for approximately 20 thefts committed on French territory between February and November 2021, but in the criminal proceedings that take part in Romania, the same defendant is investigated for a much larger number of offenses than those committed of French territory for which the European arrest warrant was issued, namely for 85 thefts.

Thus, in the report proposing the arrest, the period in which the thefts were committed is marked between 27.09.2019 -25.08.2021, effectively showing the dates on which the alleged acts were committed in France, when the requested person also participated in committing crimes. In these conditions, the European arrest warrant has an approximation of 20 thefts, and not even the period when they were committed is clearly established and described. It follows from an examination of the above provisions that when the competent “judicial authorities of the executing Member State” find that one or more of the situations expressly mentioned in the

European legislation are relevant, they may refuse to enforce the mandate, such is the case in the particular example we are discussing.

### **3. Jurisprudential aspects of the refusal to execute an European arrest warrant**

In a criminal case involving this optional reason of refusal to enforce an European arrest warrant, the Constanța Court of Appeal ruled that: “in accordance with the provisions of art. 88 para. 2 letter b of the Law no. 302/2004, the Romanian executing judicial authority may refuse the execution of the European arrest warrant if the requested person is subject to criminal proceedings in Romania for the same crime that motivated the European arrest warrant”.

Considering that the judicial proceedings in the case of the “Prosecutor's Office attached to the High Court of Cassation and Justice, the Directorate for the Investigation of Organized Crime and Terrorism, Dambovita Territorial Office” started investigating before the issuing of the European arrest warrant, that these proceedings and that most material acts are located in Romania, it is in the interest of facilitating research and finding out the truth in full so that the requested person remains in Romania.

We also appreciate that the court's decision in this case is in line with the interests of justice and the purpose of the criminal proceedings.

In the situation regulated by para. 2, the European legislator has taken into account the case when the “requested person is being prosecuted in the executing State” for the same crime or for similar crimes. We point out that such a situation has complex implications, because it is not limited to the simple refusal to execute the European arrest warrant by invoking this reason provided by the European normative act.

### **4. Conclusions**

In our opinion, the refusal to execute the warrant must be complemented by the establishment of direct links between the judicial authorities of the two Member States, with a view to adopting a solution to resolve that situation. In this context, given the complexity of the case, the specific circumstances of the crime, as well as other elements, the two judicial authorities involved will have to ascertain the incidence of another European institution, namely the transfer of proceedings in criminal matters.

More specifically, following the information provided to each other, the two judicial authorities will determine which of them will remain competent to resolve the case, all judicial documents drawn up by the other authority will be sent to the competent authority, the ultimate goal being to achieve a good administration of justice on EU territory.

---

## References

---

- Klimek, L. (2015). *European arrest warrant*. Springer.
- Komarek, J. (2007). European constitutionalism and the European arrest warrant: In search of the limits of contrapunctual principles. *Common Market Law Review*, 9, 44.  
<https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/cmlr0044&div=5&id=&page=>
- Plachta, M. (2003). European arrest warrant: Revolution in extradition. *European Journal of Crime Criminal Law and Criminal Justice*, 11, 178.  
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/eccc11&div=18&id=&page=>
- Romanian Parliament. (2010, July 15). Lege nr. 135/2010 privind Codul de procedura penala [Law no. 135/2010 regarding the Criminal Procedure Code]. *Monitorul Oficial al Romaniei*, 486. <http://legislatie.just.ro/Public/DetaliiDocumentAfis/120609>
- Romanian Parliament. (2004, May 27). Lege nr. 302/2004 privind cooperarea judiciara internațională în materie penala [Law no. 302/2004 on international judicial cooperation in criminal matters]. *Monitorul Oficial al Romaniei*, 411.  
<http://legislatie.just.ro/Public/DetaliiDocument/53158>