The Nordic Answer to the European Arrest Warrant: The Nordic Arrest Warrant

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I. Introduction

On 28 June 2006, the Council Presidency signed a judicial agreement on behalf of the EU on the surrender procedure between Member States of the EU and Norway and Iceland, respectively.[1] The outcome of this agreement will provide possibilities to apply to a very large extent the provisions of the Framework Decision on the European Arrest Warrant (hereinafter: FD EAW) in cases involving Norway and Iceland in relation to the European Union. It is difficult to say when exactly the agreement will be in force, since all contracting parties must accept first in order for it to enter into force. Therefore, it will be some time before Norwegian courts have to deal with problems arising from surrender procedures.

However, among the Nordic countries, there is a long tradition of cooperation in the field of criminal law. The principle of mutual recognition of judgments was introduced among the Nordic countries in 1948, long before the EU put it on the agenda at the meeting in Tampere in 1999.[2] Later, new instruments were developed, e.g., on the simplification of the extradition process in 1963, the transfer of criminal prosecution in 1970, and the agreement on police cooperation in 1972. In the last few years, the European Union has played a more important role, also regarding the cooperation among the Nordic countries.[3] However, the impact of this development has taken different forms since two of the countries, Norway and Iceland, are not members of the Union. The cooperation between Denmark, Finland, and Sweden is primarily governed by the instruments introduced by the Union, and the cooperation between Iceland/Norway versus the three other Nordic Member States is still based on the inter-Nordic framework.

When the Nordic extradition process was adopted in the 1960s, it was regarded as a smooth tool for more effective cooperation between the states. After the introduction of the European Arrest Warrant, for which the Nordic framework might have been an inspiration,[4] the original extradition process between the Nordic countries seemed to be old-fashioned compared with the process under the European Arrest Warrant. Today, we have two sets of regulations on extradition in the Nordic states: extradition between Denmark, Finland, and Sweden can be based on the European Arrest Warrant, while extradition to or from Norway/Iceland has to be built on the legislation from 1963.

Some commentators have criticized the fact that the European Arrest Warrant has gone too far when it comes to the States' obligation to surrender citizens. This criticism has not been an obstacle in that the Nordic countries have decided to develop a new tool for extraditions which will be even more effective than the EAW. The new instrument is named the Nordic Arrest Warrant and, for the time being, each of the Nordic countries has started the legislative process to introduce this particular arrest warrant into its domestic law. The Nordic Arrest Warrant will probably come into force in 2008. In this article, I will give a brief overview of the content of the new Nordic tool in this legal field.

II. The Nordic Arrest Warrant (NAW)

The European Arrest Warrant (EAW) was adopted on 13th June 2002.[5] As a follow-up to the creation of this instrument, the Nordic Ministers of Justice, at a meeting on Svalbard (Spitsbergen)/Norway on 25th June 2002, decided that the Nordic extradition acts should be revised based on the EAW.[6] It was a basic principle for this revision that extradition between the Nordic countries should at least be at the same level of efficiency as the EAW.

The convention for the revision was adopted at the Nordic Ministers of Justice meeting in Skagen/Denmark on 21st June 2005 and signed by the competent authorities in Copenhagen on 15th December 2005. Based

on this convention (hereinafter: NAW Convention[7]), each of the Nordic countries has to implement the convention by adopting new extradition acts.

Compared with the existing Nordic legislation on extradition, the Nordic Arrest Warrant (NAW) will differ on four points: First, the term ”extradition request“ will be replaced with ”arrest warrant“ and the term ”extradition“ will be replaced with ”surrender“. Second, the new instrument ends the system in which the states had the option whether an extradition request shall be granted; now, the receiving state of an arrest warrant will be obliged to arrest the said person and surrender him to the state which has instituted the warrant. Third, governmental authorities shall not be involved in the process, but the prosecuting (judicial) authorities themselves shall take the decision on surrender. It is further worth mentioning that only if the arrested person does not give his consent is a court required to make the decision. Fourth, the time limits for enforcement of an arrest warrant will be shortened.

In sum, the procedure concerning extradition is far simpler compared with the present extradition process between the Nordic countries. According to the Ministry of Justice of Norway, the new system will be an effective tool in combating cross-border crime. As already mentioned, the right to judicial review will be maintained in cases in which the said person does not consent to the surrender.

The Norvegian Ministry of Justice additionally emphasized, that there is a need for the new instrument due to the increasing rate of organized and cross-border crime. Effective combating of crime in an area of free movement of persons and goods demands that there are no obstacles to investigation and prosecution in each state. If any such obstacle should be in place, a particular state might be regarded as a save haven for criminals. At the same time, the preamble to the convention states that it is built on the principles of freedom, democracy, respect of fundamental human rights and a high degree of trust in each other’s legal systems. The rhetoric used followed the same line as is often used when introducing new and far-reaching measures in the area of criminal law within the European Union. So far, this rhetoric has had the requested effect in the Norwegian parliament. Parliamentarians were convinced that amendments to the Norwegian criminal law are necessary in order to avoid Norway being regarded as safe harbour for foreign criminals.

Compared with the EAW, the NAW goes even further on six points. First of all, the double criminality clause has been completely abandoned (Article 2 para. 3 of the NAW Convention). Thus, the receiving state will be unable to refuse the arrest with the argument that the said act is not criminalized in the receiving country. For instance, Norwegian or Danish citizens shall be surrendered to Sweden if they have bought sexual services in Sweden, even if this is not a criminal act in Norway or Denmark.[8] Even though the limitation of the double criminality clause in the EAW has been criticised, the criticism had no impact on the Nordic countries’ effort to create an even more far-reaching tool in the field of extradition.

Furthermore, in comparison to Article 2 para. 1 of the FD EAW – which requires that an arrest warrant may be issued for acts punishable by the issuing state by a custodial sentence or detention order for a maximum period of at least 12 months – there is no such requirement in the NAW. The act for which the arrest warrant is issued need not contain a certain level of custodial sentence or a detention order (Article 2 para. 1 of the NAW Convention). It is sufficient that the act is punishable with such a sanction. Surrender can also take place for several acts as long as only one of them fulfils this condition (Article 2 para. 2 of the NAW Convention).

There is no exception of the surrender of nationals which means that foreigners as well as nationals of the executing state shall be surrendered. The exception for non-execution due to the fact that the act is a political offence, which is included in the Nordic extradition legislation from 1963, has been abolished in the NAW Convention. However, even if the states are obliged to execute a NAW as a starting point, there are some reasons for mandatory non-execution of the warrant (Article 4 of the NAW Convention). The exceptions lis-

ted in Article 4 are actually the same as those listed in Article 3 of the EAW. However, the list of grounds for optional non-execution in Article 5 of the NAW Convention does not include some exceptions of the correspondent article of the FD EAW; as a consequence, the grounds for optional non-execution in paragraphs 1, 4 and 7 lit. b of article 4 of the FD EAW were not included into the NAW Convention.

When it comes to the surrender procedure, the content and form of the Nordic Arrest Warrant is actually the same as that of the European Arrest Warrant (cf. Article 7 of the NAW Convention and Article 8 of the FD EAW). In a similar way as the EAW, the NAW gives the said persons certain rights in the course of the procedure (Article 9 of the the NAW Convention, Article 11 of the FD EAW), and it is also possible to keep the person in detention during the surrender procedure (Articles 10 of the NAW Convention and the FD EAW respectively).

The two instruments diverge when it comes to the time limits. While the 1963 instrument for extradition between the Nordic countries does not include any time limits for the execution of an extradition request, the introduction of time limits in the EAW was one of the major novelties – a big step forward in speeding up the extradition process. In general, the time limits are far more stringent in the NAW compared with the EAW. Time limits are laid down in Article 17 (for a decision to execute the European Arrest Warrant) and Article 23 (for the surrender) of the FD. In cases where the requested person consents, the final decision on the execution of a request shall be taken within a period of 10 days after consent has been given (Art. 17 para. 2 of the FD EAW). In contrast, the time limit according to the NAW is 3 days in these cases (Article 14 para. 2). In cases without consent, the EAW sets a time limit of 60 days (Article 17 para. 3 of the FD), while the NAW Convention puts the limit at 30 days (Article 14 para. 3). As regards the time limits for the surrender of the person requested, the FD EAW sets a time limit of no later than 10 days after the final decision on the execution (Art. 23 para. 2 of the FD), whereas the NAW Convention puts the time limit at no later than 5 days (see Article 19 para. 2).

Finally, the EAW and the NAW differ when it comes to possible prosecution for other offences committed prior to the surrender. Under the NAW regime (Article 23 of the Convention), the person who is surrendered can be prosecuted for offences prior to his or her surrender to a wider extent than under the parallel provision of the EAW framework (Article 27 of the FD EAW). While Article 27 of the FD EAW is framed as an exception, Article 23 of the NAW Convention states as a principle that prosecution may take place for other offences committed prior to the surrender and then makes certain exceptions.

III. Closing Remarks

Even if the European Union will play an essential role in the future when it comes to harmonization and cooperation in the field of criminal law, I believe the conditions are favourable for developing an even closer cooperation between the Nordic countries.[9] Today, we have a system with mutual recognition and enforcement of judgments, but this system can be improved and extended to other judicial decisions.[10] For instance, when it comes to wiretapping of mobile phones, it would be an improvement if such a decision could apply to the whole Nordic area, regardless of whether the phone owner moves from one country to another.[11] In addition, other aspects of police cooperation could be subject to improvement.[12] The solid foundation for this potential improvement is the mutual trust that exists between the Nordic countries. Against this background, it is worth mentioning that the implementation of the Nordic Arrest Warrant has so far not been met with any critical public debate.

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1. Council Decision 2006/697/EC, OJ L 292, 21.10.2006, p. 1-19.↩
2. See *Fredrik Wersäll,* Straffrätsligt samarbete i ett gränslöst Norden *NTfK 2006* p. 124.↩
3. See *Wersäll* (note 2) pp. 122-123.↩

4. See *Wersäll* (note 2) p. 122.↩
5. Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA); OJ L 190, 18.7.2002, p. 1-18.↩
6. See *Wersäll* (note 2) p. 123 who, criticising that the EAW was the model for the initiative, suggested that it would be better to improve the common Nordic legislation on extradition in order to improve the extradition process.↩
7. The Nordic arrest warrant is published in Norvegian at: http://www.regjeringen.no/upload/JD/Vedlegg/Vedlegg%20II%20h%C3%B8ringsnotat%20arrestordre.pdf. In Danish as Bilag B at: https://www.retsinformation.dk/Forms/R0710.aspx?id=88198.↩
8. The Norwegian Government has stated that, before 2009, it will put forward a proposal with a similar statute than Sweden that criminalizes the act of buying sexual services.↩
9. See *Wersäll* (note 2) p. 123. See also *Wersäll* (note 2) pp. 124-126 on the vision of a Nordic area without borders and unconditional recognition of judicial decisions.↩
10. See likewise *Wersäll* (note 2) p. 124.↩
11. See likewise *Wersäll* (note 2) p. 125.↩
12. See further *Wersäll* (note 2) pp. 125-126.↩

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