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FRAMEWORK DECISION ON THE EUROPEAN ARREST WARRANT FROM THE PERSPECTIVE OF TURKISH LAW

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This is to certify that we have read this thesis and that we find it fully adequate in scope, quality and content, as a thesis for the degree of Master of Arts.

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ABSTRACT

FRAMEWORK DECISION ON THE EUROPEAN ARREST WARRANT FROM THE PERSPECTIVE OF TURKISH LAW

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European Public Law and European Integration Programme

Supervisor: Prof.Dr. Feridun Yenisey

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This study deals with the new extradition system in European Union that is valid since 1 January 2004. The researcher aims to present this new surrender system to the Turkish Academic World. General Principles of Application of European Arrest Warrant is an important part of this study. For this reason this paper is initiated with this subject. European Arrest Warrant system has a comprehensive judicial nature. So the politicians' interventions are excluded from the modus operandi. This dissertation deeply interrogates the principle of mutual recognition in criminal matters. The guarantee of the human rights of the requested person is essential part of the EAW that can not be ignored. Double criminality is reformed and abolished in the Article 2. (2) of the FWD for 32 types of offence. Some of these crimes are participation in a criminal organization, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in arms etc.. FWD introduced grounds for mandatory or optional non-execution of the European arrest warrant to extradition law in Europe. In this paper these grounds are also examined. The Member State issuing EAW has to provide some guarantees in particular cases.

Transmission of a European arrest warrant is managed by the Schengen Information System. Consented surrender can be considered the fastest type of extradition. The time limits of executing the European arrest warrant are also important achievements in extradition culture. Effects of the Surrender are thoroughly examined. Deduction of the period of detention served in the Member State which is executing the EAW and Possible prosecution for other offences are two significant issues that can be considered as effects of surrender. By and large ,1. to 5. parts in other words most of this thesis intends to establish stable knowledge of the articles of the FWD. 6. to 9. parts will provide a lengthy outline of Turkish Extradition system and presents possible obstacles for Turkey, in the event of being an EU member state, in respect to the terms required by the FWD.

Finally, this thesis paper will conclude whether the significant change in extradition in other words The FWD stipulations has made a great contribution to develop of extradition law in Europe or not. Moreover it will reflect a light on Turkey's future position in the event of being a party to the framework decision as well as Acquis Communautaire.

Keywords: European Arrest Warrant, Framework Decision, Surrender, Fugitive, Extradition, Eurojust, European Union, Issuing or executing member state, Turkish Criminal Law, International Criminal Law.

ÖZET

TÜRK HUKUKU AÇISINDAN AVRUPA YAKALAMA EMRİ ÇERÇEVE KARARI

Par, Necmettin

AVRUPA KAMU HUKUKU VE ENTEGRASYONU PROGRAMI

Tez Danışmanı: Prof. Dr. Feridun Yenisey

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Bu çalışma Avrupa Birliğinde 1 Ocak 2004'den itibaren yürürlükte olan iade sistemiyle ilgilidir. Araştırmacı bu yeni teslim sistemini Türk akademik dünyasına tanıtmayı amaçlamaktadır. Avrupa yakalama emri uygulamasının genel prensipleri bu çalışmanın önemli bir bölümünü oluşturmaktadır. Bundan dolayı bu çalışma belirtilen konuyla başlatılmıştır. Avrupa Yakalama Emri sisteminin büyük çoğunlukla adli bir yapıya sahip olduğu görülmüştür. Böylece politik müdahaleler iade operasyonunun haricinde tutulduğu anlaşılmıştır. Bu tez ödevi uluslar arası suçlarla mücadelede ortak tanıma meselesini derinlemesine ele almaktadır. İade konusu kişinin insan haklarının garanti altına alınması Avrupa Yakalama Emri'nin görmezden gelinemeyecek bir parçasıdır. Aynı fiillerin bütün üye devletlerde suç sayılması çerçeve kararın 2. maddesinin 2. fıkrasında reforme edilmiş ve iade konusu olan suçların bütün ülkelerde suç olarak kabul edilmesi sağlanmıştır. Bu suçlardan bazıları suç örgütüne üye olma, terörizm, İnsan Kaçakçılığı, Çocukların Cinsel İstismarı, Narkotik Madde ve silah Kaçakçılığı olarak sayılabilir.

Çerçeve Kararı Avrupa Suçlu İadesi Hukukuna zorunlu veya isteğe bağlı Avrupa yakalama emrini reddetme şartlarını getirmiştir. Bu çalışmada belirtilen şartlar da incelenmiştir. Avrupa yakalama emri yayınlayan üye devlet özel durumlarda birtakım garantilere sağlamakla yükümlüdür. Öte yandan yakalama emrinin dağıtımı Schengen bilgi sistemi kanalıyla da yapılabilmektedir. Rızaya dayanan teslim iadenin en hızlı tipi olarak sayılabilir.

İade kültürünün önemli bir gelişmesi de, Avrupa yakalama emri çerçeve kararının emrin uygulanması için zaman limitleri getirmiş olmasıdır. iadenin etkileri bütünüyle bu tezde incelenmiştir. Yakalama emrini yerine getiren üye ülkede geçirilen tutukluluk zamanının toplam hükümden düşürülmesi ile iade konusu olmayan suçlar için muhtemel soruşturma konuları teslimin etkilerinden bazılarını oluşturur. Sonuç olarak 1. ile 5. bölümler arasi diğer bir deyişle tezin çoğunluğu çerçeve kararın maddelerini irdeleyerek bir bilgi zemini oluşturmayı hedeflemektedir. 6. ve 9. bolumler ise Türk iade hukukunun geniş olarak ana hatlarını inceleyerek, Türkiye'nin Avrupa birliği üyesi olması durumunda karşılaşabileceği, çerçeve karar tarafından istenen şartların sonucu olan engelleri belirlemektedir.

Sonuç olarak bu Master tezi iade hukukundaki önemli değişimi, yani çerçeve karar gelişmelerinin Avrupa iade hukukunun ilerlemesine çok büyük bir destek yapıp yapmadığı konusunu araştıracaktır. Öte yandan Türkiye'nin çerçeve karara ve daha önemlisi Avrupa müktesebatına taraf olacağı gelecekteki pozisyonuna bu tez ışık tutmaya hedeflemektedir.

Anahtar Kelimeler: Avrupa Yakalama Emri, Çerçeve karar, Teslim, Kaçak, İade, Avrupa Adli Yardımlaşma Bürosu, Avrupa Birliği, Yayınlayın Veya Uygulayan Üye Ülke, Türk Ceza Hukuku, Uluslar Arası Ceza Hukuku.

ABBREVIATIONS

Austria	:	AT
Bulgaria	:	BG
Commission Of European Communities	:	EC
Czech Republic	:	CZ
Cyprus	:	CY
Denmark	:	DK
European Arrest Warrant	:	EAW
European Union Judicial Cooperation Unit	:	EUROJUST
European Convention on the International Validity of Criminal Judgments	:	ECIVCJ
European Union	:	EU
Estonia	:	EE
Framework Decision	:	FWD
Framework Decision on European Arrest Warrant	:	FWD on EAW
European Convention on Human Rights	:	ECHR
Finland	:	FI
France	:	FR
General Directorate of International Law and foreign relations	:	GDILFR
Greece	:	GR
Germany	:	DE

Hungary	:	HU
Ireland	:	IE
Italy	:	IT
Kingdom of Belgium	:	BE
Latvia	:	LV
Lithuania	:	LT
Luxemburg	:	LU
Malta	:	MT
Mutual Legal Assistance	:	MLA
Netherlands	:	NL
Portugal	:	PT
Poland	:	PL
Romania	:	RO
Schengen Information System	:	SIS
Slovakia	:	SL
Slovenia	:	SV
Spain	:	ES
Sweden	:	SW
Turkish Penal Code	:	TPC
United Kingdom	:	UK

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1. INTRODUCTION

In this study the researcher is going to explore and try to explain the main structure and the principles of the Framework Decision on European Arrest Warrant (hereafter FWD on EAW) in the first chapter. Chapter 2 is going to find out the main differences between Turkish Extradition Law and its differences and similarities with FWD on EAW. After examining these two main issues the researcher is going to give explanations about the International Criminal Law aspects concerned, such as judicial Cooperation in Criminal Matters.

Extradition is an official procedure by which one state asks and acquires from another state the surrender of a suspected or convicted fugitive offender (http://en.wikipedia.org/wiki/Extradition). In the field of international Criminal Law, there some classical methods of mutual legal aid and some lawful ways of cooperation. Extradition is one of the oldest institutions of classic mutual legal aid. However extradition is related to the work of two states. The case goes from the court of one state to the ministry of justice of another state for legal aid. The receiving ministry of justice approaches his courts to decide. As we may see there is a long procedure which takes months, some times years, until the effective extradition takes place. The Framework Decision on European Arrest Warrant was designed to replace lengthy extradition proceedings with a simple and quick surrender procedure that is founded on the mutual recognition of arrest warrants issued by European Union (hereafter the EU) Member States. Many people in the EU have heard of the European Arrest Warrant (hereafter EAW) for the first time when Hussein Osman, also known as Hamdi Issac, was detained in Italy. He was suspected of trying to blow up a tube train at Shepherds Bush in the UK. He was detained a week after the attempted terrorist attacks in London of 21 July 2005 and Hussein Osman's case has been summoned as a shining example of the effectiveness of the new system introduced by the Framework Decision(hereafter FWD). An Italian judicial authority has accepted his surrender on 17 August 2005 and his appeal to annul the approval of the surrender request was rejected on 13 September 2005. He was surrendered to the UK on 22 September 2005. Namely, it took less than two months to return him to the UK

(http://www.petersandpeters.com/news/documents/Implementation-of-the-European-Arrest-Warrant-Scheme.pdf).

In Europe since 1648 there was a common application; the negative response to extradite the state's own nationals. Likewise, nation states in Europe provided banish many famous aliens as well. This turned out to be nearly customary practice to dispose of discarded citizens; allowing them to go into exile. While many important figures in deport can be remembered, the case of Victor Hugo (1802–1885) who is a well-known French novelist worthies to be mentioned. Hugo came into exile to Brussels during the winter of 1851/52and completed several of his work of arts there.

Nonetheless, as luck would have it, after 150 years , it was that very same place in other words ,Brussels, where the political decision was taken to completely renovate the extradition system in Europe; The Framework Decision on the European Arrest Warrant (EAW) came into being on 13 June 2002. In fact, if Hugo tried to escape from the authorities of a European state again in the future, the EAW could be very practical to surrender this kind of criminals. This paper argues the following. First, the new extradition system and articulates the articles of Framework Decision one by one. If truth be told, an intergovernmental system, founded on relations among the EU member states in the extradition area, has become an inter-judiciary system.

One of the major aims of the EAW surrender system was to ensure that surrender procedures to consume less time and this aim has been achieved as the case of Mr. Osman demonstrates.

The Commission of European Communities [1] (http://europa.eu/institutions/inst/comm/index_en.htm) is the most powerful body in the EU. The European Commission has found out that the average time to surrender a requested person contesting his/her return has reduced from more than 9 months to 43

[1] The Commission is independent of national governments. Its job is to represent and uphold the interests of the EU as a whole. It drafts proposals for new European laws, which it presents to the European Parliament and the Council. It is also the EU's executive arm – in other words, it is responsible for implementing the decisions of Parliament and the Council. That means managing the day-to-day business of the European Union: implementing its policies, running its programmes and spending its funds. The European Commission was set up in the 1950s under the EU's founding treaties.

days. 2,603 EAWs was issued, 653 people arrested and 104 people surrendered between January and September 2004 in the EU. This is the initial practice of the FWD

"Although there was a number of shortcomings in the implementation of the Framework Decision on European Arrest Warrant in all Member States, (including the UK), the overall conclusion of the Commission's report is that the EAW's "impact is positive, since the available indicators as regards judicial control, effectiveness and speed are favorable, while fundamental rights are equally observed." (Report from the Commission 2005).

According to Eurosceptics [2] (http://en.wikipedia.org/wiki/Euroscepticism); The EAW was wished-for many years ago but there was severe disagreement between the Member States on the proposal. This situation led to little progress in the area of Mutual Legal Assistance (hereafter MLA) but, it took just 10 days following the September 11th attacks in the US to call an extraordinary session of the European Council to endorse a plan to speed up the approval of the FWD on EAW.

There is no doubt that state's capability to guard its own citizens from the intervention of alien powers is one of the important features of national sovereignty. To protect and consider extraditing foreign people in a state's territory is different aspect of state independence.

1.1 THE CONDITIONS OF THE APPLICATION OF TURKISH CRIMINAL LAW IN TERMS OF PLACE: THE PRINCIPLE OF TERRITORIALITY.

Turkish new penal code has regulated that Turkish Criminal Laws can be applied only to the crimes which are offended in the territory of Turkish Republic. After this Explanation, there comes an exception. If the criminal behavior was partly conducted in Turkey or the result of the offence effects Turkish territory; it shall be considered as the crimes omitted in Turkish area. (Article 8/1 YTCK) and Turkey has certainly the Judicial power against any offenders who committed any crimes in its territory. If a Turkish national commits a crime in a foreign country and gets sentenced, He/she will be retried in Turkey. If that

[2] **Euroscepticism** has become a general term for opposition to the process of further European integration. It is not, however, a single ideology, and eurosceptics differ on both their vision of Europe and on the manner in which it is perceived to fail thus some eurosceptics seek a different form of European Union whilst some seek the withdrawal of their own country from the EU and yet others seek the complete dissolution of the EU.

offender is a foreigner; upon the request of the Minister of Justice, a trial can be opened against him/her. There should be relevance with Turkish Extradition Law.

There is no doubt that Turkish criminal code does not aim to allow the offender go without punishment using territorial rule as a basic condition. For example; there is a foreigner committed an offence against another foreigner outside of Turkish territory and the offender is remaining in Turkey. He/she will be made up of a trial against and probably if he/she is found guilty, he/she will be sentenced in line with the Turkish Penal Code.

Furthermore, the land where the border lies is also considered Turkish territory. This Territory term contains rivers, lakes and internal water of Turkish Republic. There is a code regarding internal water of the country declaring that "six miles from the Turkish Coast is considered Turkish territory."

Turkish New Criminal Code has prolonged the meaning of Turkish Territory. If

There is a crime committed:

i) In the territory, internal water or on the airspace of Turkey;

ii) On a ship or an airplane abroad which has Turkish flag, or in the event that the said ship is in international water or the airplane mentioned is on international air space;

iii) In or within Turkish warships and military airplanes, when they are in international water or international air space;

iv) Last but not least within the Turkish Continent Shelf in or against the platforms created in Turkish economic space. (Article 8/2 Turkish New Criminal Code.)

Most academicians accept that a crime become international if it is committed in at least two states. There is a judgment of Turkish Supreme Court about a hijacking case from started from Bulgaria ended in Turkey (Yenisey 2008 , pp 63-64).

The European Commission has played an important role in the development of European integration in terms of simplifying extradition with the powers of this supranational institution [3] (http://en.wikipedia.org/wiki/Supranational). The

[3] **Supranationalism** is a method of decision-making in multi-national political communities, wherein power is transferred to an authority broader than governments of member states. Because decisions in some supranational structures are taken by majority votes, it is possible for a member-state in those unions to be forced by the other member-states to implement a decision. Unlike in a federal supra-state, member states retain nominal sovereignty, although some sovereignty is shared with, or ceded to, the supranational body. Full sovereignty can be reclaimed by withdrawing from the supranational arrangements. A supranational authority, by definition, can have some independence from member state

Commission's plan for renovating extradition has gone much further than the proposals to make straightforward extradition law within the EU. These proposals are founded in the 1999 conclusions of the Tampere European Council [4] (http://www.europarl.europa.eu/summits/tam_en.htm) . The proposals for the Framework Decision on European Arrest Warrant did not use the term 'extradition', and intentionally replaced it with the term 'surrender'. The national judicial authorities anticipated to have the power of decision on its enforcement. As a result of creation this new institution, political interventions would be kept out by excluding the national executives from the decision-making and implementation procedure.

Even if member states signed declaration approving of new surrender system. The legal outcome of this new instrument is subject to the jurisdiction of the European Court of Justice[5] (http://europa.eu/abc/12lessons/lesson_4/index_en.htm) . The decision of the European Court of Justice would narrow for implementation but could be an enhancement related to classic extradition systems. However the Commission preferred to establish the arrest warrant practice via a framework decision tool. As we know Framework decisions are one of the third pillar instruments created by the Treaty of Amsterdam [6] (http://europa.eu/abc/treaties/index_en.htm), Framework Decisions are

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governments, although not as much independence as with federal governments. Supranational institutions, like federal governments, imply the possibility of pursuing agendas in ways that the delegating states did not initially envision.

[4] The Tampere European Council held a special meeting on 15 and 16 October 1999 in Tampere/Finland on the creation of an area of freedom, security and justice in the European Union. At the start of proceedings an exchange of views was conducted with the President of the European Parliament, Mrs. Nicole Fontaine, on the main topics of discussion. The European Council is determined to develop the Union as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam. The European Council sends a strong political message to reaffirm the importance of this objective and has agreed on a number of policy orientations and priorities which will speedily make this area a reality.

[5] The Court of Justice of the European Communities, located in Luxembourg, is made up of one judge from each EU country, assisted by eight advocates-general. They are appointed by joint agreement of the governments of the member states for a renewable term of six years. Their independence is guaranteed. The Court's role is to ensure that EU law is complied with, and that the Treaties are correctly interpreted and applied.

[6] The Treaty of Amsterdam, signed on 2 October 1997, entered into force on 1 May 1999. It amended and renumbered the EU and EC Treaties. Consolidated versions of the EU and EC Treaties are attached to it. The Treaty of Amsterdam changed the articles of the Treaty on European Union, identified by letters A to S, into numerical form.

binding for the member states as to the result to be achieved, with the way that leaves national authorities the choice of form and method of transposition (Kaunert, 2007 387-404).

This thesis paper will proceed in two stages. The first chapter will establish knowledge of the articles of the FWD on EAW. The second chapter will provide a lengthy outline of Turkish Extradition system ,its differences similarities with the FWD on EAW, and in the event of a being EU member state, the requirements wanted by the FWD.

Finally, this thesis paper will conclude that the significant change in extradition, in other words, The FWD stipulations have made a great contribution to extradition in Europe. Moreover it will reflect on the Turkey's future position in the event of being a party to the framework decision.

2. GENERAL PRINCIPLES OF APPLICATION OF EUROPEAN ARREST WARRANT

2.1. JUDICIAL NATURE OF EUROPEAN ARREST WARRANT

2.1.1. The European Arrest Warrant is a Judicial Surrender Procedure

In long-established extradition procedures, the concluding resolution with regard to execute or not to execute the surrender request about a fugitive is a biased in other words, a political choice. Despite the fact that courts have been drawn in this process, the role of those is habitually "restricted to depiction of an opinion. This opinion is not obligatory on the administration in all circumstances legally on the permissibility of extradition requests. Especially in politically critical cases these mentioned judgments can not put a stop to political intercession. It is claimed that the FWD was created to finish political safe spaces throughout the EU by getting rid of the political phase of surrender. Article 1 of the Framework Decision reads that "the European Arrest Warrant is a judicial decision…" (Durmaz 2007, pp 66-83)

It is reported by the Commission of European Communities that the surrender of the fugitives throughout the European Union pursuant to a European Arrest Warrant has become totally judicial. This can be inferred from the fact that a majority of Member States allows straight links among judicial authorities, at the different stages of the surrender procedure. (FWD Articles 9(1), 15 and 23) Nevertheless, Some Member States have chosen an executive organization as the competent judicial authority for all features such as Denmark Estonia, Latvia Lithuania, Finland, and Sweden. Following the FWD, the interposition of a central authority with a monopoly on transmissions has been chosen only by a minority (Article 7: Estonia Ireland, Hungary, Malta, and United Kingdom). But, it is to be felt sorry that there are instances (Estonia Ireland) where the decision-making powers given to central authorities surpass the simple easing role that the Framework Decision regulates (Report from the Commission 2005)

Perhaps the most outstanding characteristic of this new extradition system introduced by the Framework decision is the aspect of eliminating the monarchy of the officials. Judicial authorities are granted the sole power to coordinate this surrender modus operandi. Moreover the issuing and executing authorities have to be capable to issue or execute an EAW according to the law of the issuing or executing State (FWD Article 6).

However the proposal for the Framework Decision proposed by the European Commission was more explicit by using 'the judge or the public prosecutor' in the description of such an executing authority. In view of the fact that the process of executing a European Arrest Warrant is mainly judicial, the political part of the extradition modus operandi has been omitted. Handing over two separate functions in a sole resolution granted the exclusion of the executive from the extradition system. The EAW provides a warrant for arrest and detention moreover; it is a warrant for the surrender of the requested person. The term 'request' or requesting and requested state is not used in the Framework Decision; therefore 'central authority' has a very limited role of the in the new surrender process. The concerning participation is controlled in terms of assured kind of circumstances that must be carefully scheduled. This can be exclusion more willingly than a regular application (Planchta 2003)

The judicial nature of the European Arrest Warrant comes from its content. Mainly it has arrest and surrender terms. These two procedures more or less issued by judicial authorities. This decision is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person but for what? Certainly for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. Surprisingly, this meaning is not like the one submitted in the proposal prepared by the European Commission. [7]

Each Member State has to assign a judicial authority to organize surrender requests with minimum bureaucracy. In order to omit traditional political bodies from

[7] The European Commission's proposal contained the following definition: 'European arrest warrant' means a request, issued by a judicial authority of a Member State, and addressed to any other Member State, for assistance in searching, arresting, detaining and obtaining the surrender of a person, who has been subject to a judgment or a judicial decision, as provided for in Article 2 (Article 3(a).

surrender process Judicial Decision was created and the politicians are excluded from the new system (Boister and Burchill 2000).

The Law Lords of UK brought into being that General Augusto Pinochet [8] (http://en.wikipedia.org/wiki/Augusto_Pinochet's_arrest_and_trial) , Chile's ex-president, does not have protection for offences in opposition to humanity conducted under his orders while he was in power. Their reasons: torture and hostage-taking are not the functions of a head of state and so an ex head of state who directs these activities does not benefit from protection from prosecution for such offences the same as infringements of international law. After their first decision was disqualified owing to so-called bias, the Law Lords again found that Pinochet did not have sovereign immunity, but in this occasion for a much more restricted variety of offences. No matter what the ultimate fate of Pinochet it is well doubtful he will serve any form of penalizing sentence. However; these judgments come out to mark a turning point in international law.

Whatsoever, it is inevitably true that article 1 of the Framework Decision clearly defines the new system as a judicial decision to prevent political interventions. Framework decision does not foresee an automatic extradition process. On the contrary there is not a hierarchy between issuing and executing bodies (Planchta 2003).

[8] **General Augusto Pinochet was indicted in 1998** by the Spanish magistrate Baltasar Garzón, arrested in London and finally released by the UK government in 2000. Authorized to freely return to Chile, he was there first indicted by the judge Juan Guzmán Tapia, and charged of a number of crimes, before dying on 10 December 2006, without having been convicted in any case. Pinochet's arrest in London made the front-page of newspapers worldwide as not only did it involve the head of the military dictatorship that ruled Chile from 1973 to 1990, but it was the first time that several European judges applied the principle of universal jurisdiction, declaring themselves competent to judge crimes committed by former head of states, despite local amnesty laws. Pinochet came to power in a violent coup which deposed President Salvador Allende. His regime has been accused of numerous human rights violations, a number of which committed as part of Operation Condor, an illegal effort to suppress political opponents in Chile and abroad in coordination with foreign intelligence agencies. Pinochet was also accused of using his position to pursue personal enrichment through embezzlement of government funds, illegal drug trade and illegal arms trade.

2.1.2. Extradition Procedure under Turkish Law

If a foreign state demands the extradition of a foreigner remaining in Turkey. The Court of Assize in other words "Former the Court of General Criminal Jurisdiction" Of the place that the accused person is staying makes sure the Nationality and the type of the crime mentioned in the request. The person requested has the opportunity to appeal the concerning decisions of the court of assize to the court of cassation. As a result of this eligibility test, if the court decides on the non extradition of the person the time is up for extradition. Until this stage the extradition is totally judicial in Turkey. But if the court decides that the extradition request is eligible to conduct. The political phase starts. The government has the political power whether to execute the decision of the relevant court or not. If the politicians accept that decision in line with Criminal Procedural Code, an arrest warrant against the fugitive can be issued. Article 18/5 of the New Criminal Code regulates this phase. There is rule of specialty in Turkish Law. According to article18/8 of New Turkish Criminal Code, after the extradition takes place; the fugitive can be prosecuted only in terms of crimes mentioned in the extradition request. Turkey is a party to the European Convention on Extradition. The sentence, subject of the extradition request, should be at least one year imprisonment.

1.3. The Principle of Mutual Recognition Judicial Decisions.

Inspite of the fact that the national legislation of each member state may differ. Their results must be considered as equal in other member states. If one applies this principle to EAW the principle of mutual recognition comes on the stage. Some of the problems that caused lack of mutual trust.

i) The lack of knowledge of criminal justice systems of other member states.
ii) The member states are reluctant when the requested person is own citizen.

It is highly debated that in order to overcome the resistance deprived from the harmonization in criminal justice systems of member states; The principle of mutual recognition can be used as an alternative instrument. With this instrument the Member

states have the opportunity to fight against dangers posed by terrorism and cross-border crime throughout the EU territory.

In 1998 June European Council held in Cardiff UK [9] (http://www.ena.lu/conclusions_cardiff_european_council_extract_concerning_transparency_june_1998-020007602.html). .The mutual recognition was on the agenda brought by the British proposal. Actually the principle of mutual recognition was not a new instrument for the EU. Single Market was a result of this tool. Mutual recognition was pioneered by the European Court Justice in a number of important cases, most famously Cassis de Dijon case 120/78 [10] (*w*ww.uio.no/studier/emner/jus/jus/JUTECSUB/v05/undervisningsmateriale/SEMpercent203.doc – last visited 01 February 2009) (Fabry 2007)

Tampere European Council [11] (http://ec.europa.eu/justice_home/glossary/glossary_t_en.htm). also speeded up the process. It set a five year agenda, for EU Justice and Home affairs, which was approved the principle of mutual recognition as the basis of judicial cooperation is both civil and criminal matters. The Tampere European Council presidency conclusions declared that: Enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate co-operation between authorities and the

[9] European Council in Cardiff (15 and 16 June 1998) Conclusions of the Presidency […] IV. Bringing the Union closer to people 27. A sustained effort is needed by the Member States and all the institutions to bring the Union closer to people by making it more open, more understandable and more relevant to daily life. The European Council is therefore particularly concerned to see progress in policy areas which better meet the real concerns of people, notably through greater openness, and progress on environment and justice and home affairs. Openness 28. The European Union is committed to allowing the greatest possible access to information on its activities. The Internet is being used to provide more information on the European Union, including shortly a public register of Council documents. The Commission, the Council and the European Parliament should prepare rapid implementation of the new provisions on openness in the Treaty of Amsterdam. 29. The European Council welcomes the Commission's use of the Internet to promote an effective dialogue with citizens and business on their single market rights and opportunities.
30. The European Council noted the outcome of the People's Europe 98 conference.

[10]German law prohibited the marketing of liqueurs with an alcoholic strength of less than 25°. This made it impossible for the plaintiff to import a consignment of Cassis de Dijon, a French liqueur with a strength of between 15 and 25°, into Germany. The liqueur therefore could not compete with the stronger German one. No restrictions on the production and marketing of the weaker liqueur existed in France. European Court of Justice decided that there was no valid reason why provided a product is lawfully marketed in one Member State it should not be introduced into any other Member State – mutual recognition *approach*

[11] In October 1999 the Tampere European Council adopted a comprehensive approach to put into practice the new political framework established by the Treaty of Amsterdam in the area of Justice and Home Affairs. The European Council set ambitious objectives and deadlines for action in all relevant areas, including asylum and immigration, police and justice cooperation and fight against crime .

judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgments and to other decisions of judicial authorities (http://www.consilium.europa.eu/ueDocs/cms_Data/docs/ pressData/en/ec/00200-r1.en9.htm)

It is inevitably true that 'the requirement of double criminality'. The most evident characteristic of the Framework decision is the striking hindrance for surrender also it is a reluctance to count on other member states' legal order. But this rule does not apply for indisputable crimes in the FWD (no double criminality). This is a good example of mutual recognition. So the executing state ceases to have some of its sovereignty about the control of implementation of the judgments in its area of control (Wagner 2003)

Opposite to the earlier agreements, this new instrument includes a detailed list of 32 crimes that does not require double criminality in all member states. Those offences have a three year maximum sentence at least. (FWD Article 2/2). These crimes are participation in a criminal organization, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in arms, ammunition and explosives, money laundering, murder, illicit trade in human organs and tissue, sabotage, racism and xenophobia, organized or armed robbery, illicit trafficking in cultural goods, illicit trafficking in nuclear or radioactive materials, trafficking in stolen vehicles, rape, and unlawful seizure of aircraft/ships. Furthermore the council of the EU has authority to enlarge the catalog crimes and modify it. For the crimes out of the list, double criminality rule is still a need for them (Durmaz 2007 pp 66-83)

2.1.4. Turkish Application for the crimes perpetrated in Foreign Countries.

Since 1965 there has been some progress in the area of crimes committed outside of Turkey. According to article 18/1 of the old Turkish Criminal Code; There was an opportunity for a foreigner, committed a crime in Turkey, to serve his/her sentence in

his/her country. This kind of imprisonment was dependent upon the principle of reciprocity and guaranteeing of whole sentence execution. This application was widened by the act number 3002 Act. It stipulates that 'the judgment of foreign countries is to be applied in Turkish prosecutions. However the final sentence can not be tougher than the one of the foreign country. Furthermore the foreign offenders, sentenced in Turkey, have the opportunity to serve the sentence in their own country provided that there is ground of reciprocity (Yenisey 2008, p.69)

2.1.5. The Guarantees for the Human Rights of the Requested Person in the FWD.

The EAW has two natures for the protection of fundamental rights. One is its birth was compatible with the human rights of the requested person with reference article 6 of the Treaty on European Union [12] (hereafter TEU) (http://europa.eu/scadplus/treaties/maastricht_en.htm). Other one is that the framework decision has some important articles to guarantee the fundamental rights of the person to be surrendered. Recitals 12-13 and article1 (3) are strengthening the protection of requested person. Although the recitals are not binding on member states they have already obligation in all member states. Judgments in abstentia and ne bis in idem principle are some of the guarantees granted by the framework decisions. For example; if the judgments were rendered in abstentia the executing state may ask for a guarantee

[12] The Treaty on European Union (TEU), signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. This Treaty is the result of external and internal events. At external level, the collapse of communism in Eastern Europe and the outlook of German reunification led to a commitment to reinforce the Community's international position. At internal level, the Member States wished to supplement the progress achieved by the Single European Act with other reforms. This led to the convening of two Inter-Governmental Conferences, one on EMU and the other on political union. The Hanover European Council of 27 and 28 June 1988 entrusted the task of preparing a report proposing concrete steps towards economic union to a group of experts chaired by Jacques Delors. The Dublin European Council of 28 April 1990, on the basis of a Belgian memorandum on institutional reform and a Franco-German initiative inviting the Member States to consider accelerating the political construction of Europe, decided to examine the need to amend the EC Treaty so as to move towards European integration. It was the Rome European Council of 14 and 15 December 1990 which finally launched the two Intergovernmental Conferences. This culminated a year later in the Maastricht Summit of 9 and 10 December 1991.

that the person will be able to have a retrial of the case in the issuing member state and to be present during the trial.

As well as these extensive careful thoughts some exclusive articles of the framework decision aim to make sure that the subject of the surrender procedure in other words, the requested person will have the basic rights after the arrest guaranteed by the national law of the executing state. It is inevitably true that the framework decision does not apparently intend to harmonize own law of the issuing and executing states. On the other hand it advices a mutual protection of the rights of the requested person. Since all member states are parties of European Convention on Human Rights [13] (hereafter ECHR) (http://en.wikipedia.org/wiki/European_Convention_on_Human_Rights). The procedure mentioned have somehow humanitarian instrument in it. If one thinks the opposite there would be some inconsistencies in the application of Framework Decision.

Here are some guarantees granted by various articles of the FWD. The requested person has the right to be informed of the legal basis of the EAW issued against him or her. (FWD Article 5 .1). The relevant person should have opportunity to take advantage of a lawyer or a language assistant(FWD Article 11 .2). In case of consent given by the requested individual, he or she has to be given legal information about the result of the acceptance. Furthermore the executing member state has to make sure that the consent

[13] The **Convention for the Protection of Human Rights and Fundamental Freedoms** (also called the "European Convention on Human Rights" and "ECHR"), was adopted under the auspices of the Council of Europe[1] in 1950 to protect human rights and fundamental freedoms in Europe. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity

The Convention established the European Court of Human Rights. Any person who feels his or her rights have been violated under the Convention by a state party can take a case to the Court. The decisions of the Court are not automatically legally binding, but the Court does have the power to award damages. The establishment of a Court to protect individuals from human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena (traditionally, only states are considered actors in international law). The European Convention is still the only international human rights agreement providing such a high degree of individual protection. State parties can also take cases against other state parties to the Court, although this power is rarely used.

The Convention has several protocols. For example, Protocol 6 prohibits the death penalty except in time of war. The protocols accepted vary from State Party to State Party, though it is understood that state parties should be party to as many protocols as possible.

and rejection of the `specialty rule' are applied in a democratic environment where the requested person consented voluntarily and was aware of the legal results. (FWD Article 13 .2) This new instrument made important contributions to protect the basic rights of the requested person to a hearing(FWD Article 14) Valid only some scarce exceptions, the requested person after the initial surrender, he or she may not be prosecuted, sentenced or otherwise prevented from enjoying his or her liberty for a crime conducted earlier than the surrender, different from the subject crime for surrender request. One should not forget that the FWD has further safeguard in terms of stopping the liberty of the requested person. That is to say the detention time, derived from the implication of the European Arrest Warrant ,will be reduced from the total time of detention to be served by the issuing member state (GNON & DAUCE 2007).

The framework decision has number of barrier to prevent unfair surrender that may be a breach of fundamental rights. Such as 'optional non execution of European Arrest Warrant.(FWD Article 4). But there is not a list of these barriers in the framework decision (Alegre & Leaf 2004) Even though it has been debated that a real violation of human rights must be the sole hindrance to surrender in an actual European Judicial Space.[14]

In a 2005 Report from the Commission, some facts were revealed. The foreword of grounds not provided in the Framework Decision was found disturbing. The extra basis for rejection based on "ne bis in idem" concerning the International Criminal Court, which enables certain Member States to fill a gap in the Framework Decision, was an other issue. The similar things can be said about the explicit grounds of refusal for violation of fundamental rights (FWD Article 1(3)) or discrimination (recitals 12 and 13), which two thirds of the Member States have preferred to establish explicitly in assorted forms. Nevertheless lawful they may seem, but, apart from where they exceed the Framework Decision (EL, IE, and CY), these grounds should be invoked only in exceptional circumstances within the Union. More visible still was the foreword of other reasons for rejection of a surrender request, that are opposite to the Framework

[14] This argument was put forward by Judge Baltazar Garzon Real at Justice conference,Eurowarrant:Extradition in the 21st century, London 5,6 July 2003. 11. by Alegre S., Leaf M.

Decision (Article 3: DK, MT, NL, PT, UK), such as political explanation, reasons of national security or those involving examination of the merits of a case.

It was stated by the European Commission that while better organized and quicker than the extradition procedure, the arrest warrant was still dependent on full compliance with the individual's guarantees. In contrast to what some Member States have done, the Council did not mean to make the general condition of respect for fundamental rights a ground for refusal in the event of violation. A judicial authority is, certainly always has the authority to refuse to execute an arrest warrant, if it finds that the proceedings have been vitiated by infringement of Article 6 of the TEU and the constitutional principles common to the Member States. On the other hand, in a system based on reciprocal trust, such a condition should stay behind exceptional (Report from the Commission 2005)

2.1.6. 'Ne bis in idem' principle' Under Turkish Law

The crimes ,having international effect, mentioned in the article 13 of the New Turkish Penal Code (Except 13/2 of New Turkish Criminal Code) are not immune from the 'Ne bis in idem' principle' , upon the request of Justice Minister, they can be retried in Turkey even if there were a punishment regarding that crime.

Article 13/3 of the New Turkish Criminal Code stipulates that critical crimes for the state, 'Ne bis in idem' principle' does not apply. Some of these crimes are 'Human Trafficking, Genocide, Organized Human Trafficking and the crimes committed against the state, such as insulting the Parliamentary, crimes against the Constitutional system.

There are exceptions such as Counterfeiting foreign currency and making corruption against foreign officials. According to the Article 4 of the former Turkish Criminal Code these two crimes were explicitly requiring 'Ne bis in idem' principle'

Valid Turkish Criminal Code Articles 11/1 and 12/1 explicitly stipulate that If there is a foreign judicial decision sentencing or revealing a criminal; There is a hindrance for Turkish prosecution (Yenisey 2008, pp.65-66)

2.1.7. Scope Of The European Arrest Warrant

2.1.7.1.The two conditions in which a European Arrest Warrant may be issued.

Either acts punished by the law of issuing member state by a custodial sentence or a detention order for a maximum period of at least 12 months or a sentence passed or a detention order for sentences of at least 4 months deserves a European Arrest Warrant (Planchta 2003)

2.1.7.2. The Abolishment of Double Criminality Requirement Rule.

32 types of crimes in a catalogue in FWD Article 2.2 do not need of examination of double criminality. The double criminality means that the criminal act is punishable in both issuing and executing states. The requirement of double criminality does not apply, If one of the crimes ,listed under the FWD Article 2.2, is punishable in the issuing member state by a custodial sentence or detention order for a maximum period of at least three years as they are defined by the law of issuing member state. These crimes are standardized by Article 2.2. of the Framework Decision. This provision reads that "The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

i) participation in a criminal organization,

ii) terrorism,

iii) trafficking in human beings,

iv) sexual exploitation of children and child pornography,

v) illicit trafficking in narcotic drugs and psychotropic substances,

vi) illicit trafficking in weapons, munitions and explosives, . corruption,

vii) fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,

viii) laundering of the proceeds of crime,

ix) counterfeiting currency, including of the euro,

x) computer-related crime,

xi) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,

xii) facilitation of unauthorized entry and residence,

xiii) murder, grievous bodily injury,

xiv) illicit trade in human organs and tissue,

xv) kidnapping, illegal restraint and hostage-taking,

xvi) racism and xenophobia,

xvii) organized or armed robbery,

xviii) illicit trafficking in cultural goods, including antiques and works of art,

xix) swindling,

xx) racketeering and extortion,

xxi) counterfeiting and piracy of products, forgery of administrative documents and trafficking therein,

xxii) forgery of means of payment,

xxiii) illicit trafficking in hormonal substances and other growth promoters,

xxiv) illicit trafficking in nuclear or radioactive materials,

xxv) trafficking in stolen vehicles,

xxvi) rape,

xxvii) arson,

xxviii)crimes within the jurisdiction of the International Criminal Court,

xxix)unlawful seizure of aircraft/ships,

xxx) sabotage."

But crimes out of the said generic ones still need double criminality requirement (Durmaz 2007, pp. 66-83).

On the other hand the issue of double criminality is still under debate. The principle claims that one can be extradited for an offence which is not defined a crime

in the criminal codes of both the issuing and executing Member States. But there is an exception for the 32 types of crimes mentioned. For all other crimes, double criminality requirement is a still necessity. This principle is a useful tool to strengthen the liberty of the member states to turn down an EAW issued for crimes which are not criminalized or do not have severe impact as in the requesting member states. Member States are reluctant to give some of their sovereignty in this emotional space. Abolition of Double Criminality rule for generic thirty two types of crimes is a result of mutual recognition in this field. Moreover this type of recognition depends on the presumption that all member states have common position about the initial parts of lawless.

In Turkish Criminal Law, there is a catalogue crimes application in the Turkish Law No. 5651 on the "Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications" came into force in November 2007. The article 8 of the related Law no 5651 regulates the catalogue crimes. It is worth to mention the relevant provisions of the Article 8.

Article 8(1)(a)(1): encouragement and incitement of suicide (article 84 of the Turkish Penal Code); article 8(1)(a)(2): sexual exploitation and abuse of children (article 103(1) of the Turkish Penal Code); article 8(1)(a)(3): facilitation of the use of drugs (article 190 of the Turkish Penal Code); article 8(1)(a)(4): provision of dangerous substances for health (article 194 of the Turkish Penal Code); article 8(1)(a)(5): obscenity (article 226 of the Turkish Penal Code); article 8(1)(a)(6): prostitution (article 227 of the Turkish Penal Code); article 8(1)(a)(7): gambling (article 228 of the Turkish Penal Code); article 8(1)(b): crimes committed against Atatürk (Law No. 5816, dated 25/7/1951); and football and other sports betting (Law No. 5728, article 256) (http://privacy.cyber-rights.org.tr/?p=357)

2.1.8. Grounds for Mandatory Non-Execution of the European Arrest Warrant

There are some conditions that require the refusal of an EAW. The new system calls this situation `Mandatory grounds for non execution'. Article 3 of the Framework Decision indicates these circumstances in three sections i)if the offence is covered by amnesty in

the executing state. ii)if the requested person has already served or is serving a sentence for the same acts mentioned in the EAW or the judgment can not be executed .iii)if the person is not corresponding age of the criminal responsibility of executing state. Under these three conditions although the executing state may want to surrender the person the framework decision does not allow to do it (Fabry 2007)

The Framework Decision has spent efforts to limit the grounds for refusing surrender requests between Member States, avoiding any political decision based on pragmatism and therefore providing better efficiency. In 2005 report of the Commission of European Communities regarding the application of FWD on EAW , it is suggested that the efficiency of the arrest warrant can be measured , in the short term, from the beginning of the FWD 2 603 warrants issued, the 653 persons arrested and the 104 persons surrendered up to September 2004. It should also be noted that the rejection of executing a warrant so far account for a diffident division of the total warrants issued.

The commission has come to know that the number of mandatory grounds for refusal taken on from the Framework Decision ranges from 3 to 10, depending on the Member State. All Member States have transposed the three mandatory grounds, with a few exceptions (Report from the Commission 2005).

2.1.9. Grounds for Optional Non-Execution of the European Arrest Warrant

Article 4 of the framework decision is dealing with some grounds for executing member states either to surrender or refuse an EAW. Unlike mandatory ones there are five exceptions. i) exception of double criminality. In other words for crimes out of 32 generic ones still need the requirement of double criminality in the issuing or executing member states. The executing member state may not respond in terms of this requirement. ii) in the event that the requested person is being taken legal proceedings against for the same crime as in the EAW in the executing member state. iii) the executing member state has an option to accept or decline the EAW if the crime was conducted fully or partly in the area of it or out of the area of issuing member state and the executing member state do not have jurisdiction for the same crimes conducted

outside of its region .iv)if the person is statue-barred. v)if there is a custodial sentence or a detention order about a national or a resident of executing member state; the member state has an option to guarantee to enforce the judgment in its territory (Durmaz 2007,pp.66-83)

2.1.10. Guarantees to be given by the Issuing Member States in Particular Cases.

It is inevitably true that there should be some guarantees to protect the defense rights of the fugitive .These guarantees may also affect the execution of a European Arrest Warrant .The executing judicial entity has gained the opportunity to ask for extra protection for the person subject to surrender with the FWD. In this case there are two circumstances considering the guarantees mentioned.

The Framework Decision seems to be dissimilar from traditional extradition conventions regarding human rights concerns. At the beginning of the Framework Decision, it is said that "no person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment." (Durmaz 2007,pp.66-83). In this case there are three circumstances considering the guarantees mentioned;

2.1.10.1. Decision Rendered In Absentia

Convictions decided in absentia of the fugitive, nonetheless, are not considered as grounds for refusal in the Framework Decision. The executing member states are given an opportunity to ask for a guarantee from the issuing state that the convicted fugitive - after the surrender- will be granted a chance to appeal for a retrial of the case and to attend the judgment (FWD Article 5/1) (Durmaz 2007, pp.66-83).

In traditional extradition systems, the requested state may refuse, if the person's extradition is sought in order to carry out a sentence or detention order that has been rendered against him or her in absentia, the extradition if it considers that his or her defense rights have been violated during the trial process ((Durmaz 2007, pp. 66-83).

If one talks about a European Arrest Warrant issued for the purposes of executing a sentence or a detention order imposed by a decision rendered in absentia. It is easily understood that the fugitive has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision. The FWD has a solution for this problem. That is to say , the issuing judicial entity gives a guarantee that enable the fugitive to have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment (Council of the EU 2002)

This part of the FWD may be susceptible for misunderstandings and misusing. Especially the wording of 'otherwise informed.' In some circumstances that the summons actually may not reach the fugitive 'in person' but seems like reached. This situation in which a default judgment delivered in such a way can not satisfy the standards of the European Court of Human Rights. Or this would be accepted in one Member State but not in others. There is a risk that the information under first part of the article 5 of the FWD may not satisfy the opinion of the executing judicial authority and further information is needed. The 5(l) artic1e of the FWD stipulates that: 'The Fugitive concerned was not present because he or she was not personally summoned or otherwise informed' in other words that the fugitive needs to have fully aware of the date and place of the hearing.

In the variety of default rules a possibility exists that the executing judicial authorities in Member States will judge not similarly to judgments concerning surrender in absentia. i.e. In the Dutch Surrender Act, the criteria of the Framework Decision has been changed and the Act stipulates that the person sought be 'otherwise in Person' In other words the model for The Netherlands meet the expectations of its own grounds. But what about other member states? Will it satisfy them all? This can be a probable cause for a delay of executing an EAW. It deserves to suggest that the should refer to whether the summons has been served in person or in another way, with a further definition of 'an other way' Certainly, it is worthy to note that other possible grounds from which it shows up that the fugitive had an opportunity to defend him/herself, such as by having been represented by an attorney. It is still under debate

that whether the executing member state will consider the last point (taken from the case law of the European Court of Human Rights), as related to the matter in hand in its determination.

For the judicial guarantees to be furnished, the Framework Decision brings in to existence ambiguity by providing for a different standard of judgment from the traditional extradition criterion. In the second Additional Protocol to the European Treaty on Extradition, the Member States were granted the opportunity to ask for a guarantee of a new procedure in the case of a decision rendered in absentia.

The Framework Decision gives the explanation of the guarantee to be requested as: 'to request a retrial procedure and to be present at the hearing'. Such circumstances may be contrary to Article 6 of ECHR or that would be admitted by a judicial authority of Member State but not in other member states. The various judicial entities in such a situation may come up with different judgments. It is highly debated that the ingredients of the guarantee must be clarified (Blekxtoon&Ballegooij 2005, pp. 55-56)

2.1.10.2. Custodial Life Sentence or Life-Time Detention Order

If the offence on the basis of which the European Arrest Warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure" (FWD Article 5.2)

Similarly, if the crime can be punished up to a life-time sentence, the executing member state may persist, as a ground of executing the arrest warrant, that if sentenced to life, the fugitive will have a right to have his personal situation reconsidered upon request or at the latest after 20 years (Article 5/2). There is no need to mention of death penalty in

the Framework Decision because it has already been abolished all EU Member States (Durmaz 2007,pp.66-83).

2.1.10.3. A National or a resident of the executing Member State

If a person who is the subject of a European Arrest Warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State" (FWD Article 5.3)

The surrender of nationals can be considered as a key improvement in the Framework Decision. This has become fact, except where excepted by the Decision itself (Article 33 AT). It is declared by the European Commission that most Member States, with a few exceptions (IE, SK, UK) however, have preferred to apply the condition provided that, in the case of their nationals, the sentence must be imposed in their territory (FWD Articles 4/6 and 5/3).

In this course, most Member States have opted for equal treatment of their nationals and their residents. There were some difficulties, however, according to the Commission of European Communities information, it appears that one could criticize the practice of some judicial authorities which rejects to execute arrest warrants issued for the surrender of their nationals and invoking their powers (FWD Article 4(2) and (7)), One Member State, moreover, has introduced a reciprocity ground and the exchange of sentences executed to its nationals (FWD Article 4(6): CZ).
Another member state besides considered that, with regard to its nationals, it must reintroduce a methodical confirmation on double criminality requirement and build their extradition provisional on the guarantee. This assurance suggests that it would be able to convert their sentences (FWD Article 5(3): NL).

However, this circumstance was also authorized by the Convention of 21 March 1983 on the Transfer of Sentenced Persons; this is not duplicated in the Framework Decision.

Moreover, the Convention can provide a legal basis for the execution of a sentence delivered in another State, only if that sentence has already started, which is not normally the case where an arrest warrant is issued for the purpose of executing a sentence (Report from the Commission 2005).

Turkish extradition law does not consent a surrender of its nationals. But there is an exception of 'International Criminal Court'. Only under the contractual obligations extradition of a Turkish national is allowed. (Turkish Constitution Article 38 amended by the act 2004.5170a and the article 18/2 New Turkish Criminal Code)

The repealed Turkish Criminal Code did not allow an extradition of a foreign national to a foreign country due to political or related crimes. However the new criminal code has been using a diverse term, the term similar used by the European Arrest Warrant and that is 'surrender', earlier it was using extradition. Article 18/1 of the New criminal Code stipulates that "If the action, the content of the request;

-is not a crime under Turkish Law (Double Criminality)

-is an offend having the nature of a 'freedom of expression crime' or having political or military nature;

-Is a crime against the national security of Turkey or a crime against a legal person founded under the norms of Turkish Law or a crime against a Turkish National;

-Is a crime in which Turkey does not have jurisdiction power;

-Has time expiration due to the fact that time limitation of prosecution has expired or an amnesty or a pardon has taken place;

Under these circumstances, the request of extradition is explicitly rejected. Moreover In the event that due to his/her political views, the accused person may probably be exposed to torture and there is a strong suspicion about it. The extradition request will be turned down (Yenisey 2008,p.68).

2.1.11. Determination of a Competent Judicial Authorities.

Article 6 of the Framework Decision explains the issuing and executing judicial authorities and reads that "the executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European Arrest Warrant by virtue of the law of that State." The judicial authorities are the only judicial bodies which can issue, and/or refuse the execution of the EAW (FWD Article 3 and 4). Determination of the competent entities has contributed to the making the extradition process totally judicial (Durmaz 2007,pp.66-83).

The judicial entity holding the power to issue a European Arrest Warrant is authorized compliant with the national legislation of each Member State. They will be able to delegate the decision either to the same authority as gave the judgment or the judgment referred to in Article 2 of the FWD or to another authority.

The same circumstance applies to the authority having power to execute the European Arrest Warrant. It should be noted that the authority mentioned in Article 4 of the FWD is the one which, subject to the points which might fall within the powers of the central authority (Article 5), has the authority to decide on the soundness and execution of the European Arrest Warrant and therefore on extradition to the judicial authorities of the other Member State. The political and administrative phase that characterizes the extradition system has been removed (Proposal 2001, p. 305).

2.1.12. Recourse To The Central Authority.

The Framework Decision only allows the designation of a central authority – an Administrative body – to assist the competent judicial authorities in administrative transmission and reception of EAWs (Durmaz 2005).

The Framework Decision stipulates that a central authority may be designated by a member state to help competent judicial authority, furthermore if permitted by the legal

system of the member state two or more central authorities may be founded (FWD Article 7.1). Moreover it is allowed for a member state, incase of necessity or the needed outcome of its internal judicial system, to make its central authority/is responsible for the administrative circulation of European Arrest Warrants besides for all other official writings related to it (FWD Article 7.2)

If one takes a look at the practice of this article. He or she will come to know that Some Member States, including Cyprus, Ireland and the United Kingdom have put an additional chapter in their procedure for execution of the European Arrest Warrant which the Framework Decision does not require by itself. On one hand Cyprus requires the consent of the Attorney-General before a European Arrest Warrant can be presented to a judicial authority, on the other hand the United Kingdom and Ireland apply a 'certification' or 'pre-endorsement' level before a European Arrest Warrant can be validly executed. In the first look these kind of ambiguous applications do not seem contrary to the Framework Decision; however in practice it may risk the process giving the respective central authority in these member states a political role in the process, thus defeating one of the purposes of the Framework Decision in other words 'judicialization of extradition process.'(Perignon & Dauce 2007)

Paragraph 1 of Article 7 of the FWD was motivated by the 1996 Convention and the "European Union Convention of 2000 on mutual judicial assistance in criminal matters" This is a realistic stipulation to make easy the broadcast of information throughout Member States, and the current system must be maintained. The role of these central authorities ought to be to ease the distribution and carrying out of European arrest warrants as between Member States. These central authorities are to provide in particular with translation and with administrative support for the execution of warrants.

In the wished-for method, the Decision on the validity of the European Arrest Warrant and the standard of its implementation can be decided upon by the judicial authority of the executing state. However Member States can offer that a central body which has the authority can involve in, for instance, because this kind of decision falls to be taken by an administrative authority in the system of the Member State involved. Paradigms

might be a decision that the person having protection (FWD Article 31) or a verdict that implementation of the warrant must be postponed on solemn humanity reasons (Article 38) there are enough assurance from another Member State that life time sentence is not going to be asked .(FWD Article 37).

In the event that a Member State enjoys this central body option, that member state has the obligation to arrange the affairs among its the judicial authority which has the jurisdiction to make the said decision and the central authority, in order that the first authority can observe to the opinion spoken by the second authority and as a result of this, these two powers are used within ninety days at most. These affairs should be managed in order that the central power can make its mind with being aware of the views of the fugitive (Proposal 2001)

2.1.13. Content and Form of a European Arrest Warrant

The Framework Decision furthermore aims at simplifying and speeding up procedures by establishing a single common document (FWD Article 8) and abolishing the executive granting procedure (Satzger & Pohl 2006)

The framework decision has developed a unique form to avoid different style forms for the European arrest warrant. Here is some piece information compulsory to be in a European Arrest Warrant;

a. the identity and nationality of the fugitive

b. the name, address, tel/fax numbers and e-mail address of the issuing judicial authority;

c. Evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect which falls within the scope of Articles 1 and 2 of the FWD.

d. The nature and legal type of the offence, especially in respect of thirty two catalog crimes mentioned in the Article 2 of the FWD

e. The representation of the conditions in that the relevant crime was carried out, certainly the time, area and the requested person's level of share in the crime

f. The punishment to be enforced, if there is a final judicial decision, or the set down degree of punishments of the crime prescribed by under the law of the issuing Member State;

g. Other results of the crime may be mentioned

h. The European Arrest Warrant shall be translated into the official language or one of the official languages of the executing Member State. The determination of these languages is at member state's disposal by a declaration deposited with the General Secretariat of the Council. (FWD Article 8.1)

On the other hand Member States' requirements differ significantly in detail regarding the time boundaries for the receipt of warrants following an arrest (from 2 to 40 days), translations (from a single language accepted to more than four) and means of confirmation of the originality of like a simple fax). During implementation these distinctions may postpone the surrenders or even result in failing. Moreover, some Member States ask extra requirements even not mentioned in the Framework Decision, this is the compulsion to put together things or documents not specified in the form (Article 8(1): These member states are CZ, MT.) or to circulate a different warrant for each offence (This practice is done by IE).

A total evaluation of pre-existing alerts, the expansion of safe transmission (SIS II) and, in general, the consolidation of common assurance may help to achieve this goal. Greater acceptance by each Member State of languages other than its own will make easy the work in the widened EU (Report from the Commission 2005).

3. SURRENDER PROCEDURE

3.1 TRANSMISSION OF A EUROPEAN ARREST WARRANT

3.1.1. Known Location

Oversimplification and speed of the surrender process are contributed by the Framework Decision in order to be achieved. The significant example is the transmission of the EAW: instead of using traditional diplomatic pipes; the Council of ministers invented an alternative instrument: If the place of the fugitive is identified, the issuing judicial authority may convey the European Arrest Warrant in a straight line to the executing judicial authority (Planchta 2003)

3.1.2. Role of the Schengen Information System (SIS) [15] (http://en.wikipedia.org/wiki/Schengen_Information_System last visited on 13 March 2008).

The issuing judicial authority may, anyhow, make a decision to issue an alert for the escapee in the Schengen Information System (SIS). This warning shall be affected in line with the requirements of Article 95 of the 'Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders.' An attentive in the SIS shall be the same to an EAW along with the info specified necessary to be in the unique form. (FWD Article 9).

In the proposal of the framework decision there is an aspect of transmission mentioned. That is to say : if the possible locations of the requested person are unclear, the issuing

[15] The **Schengen Information System**, also called "**SIS**", is a secure governmental database system used by several European countries for the purpose of maintaining and distributing information related to border security and law enforcement. The data collected concern certain classes of persons and property. This information is shared among the participating countries of the Schengen Agreement Application Convention (SAAC). The five original participating countries were France, Germany, Belgium, the Netherlands, and Luxembourg. Nineteen additional countries have joined the system since its creation, including Spain, Portugal, Italy, Austria, Greece, Finland, Sweden, Switzerland, Denmark, Iceland, Norway, Estonia, the Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Currently, the Schengen Information System is used by 27 countries. It should be noted that among the current participants, Iceland, Norway, and Switzerland are not members of the European Union

member state may request that an alert is made in the Schengen Information System (SIS) that aiming the arrest of that person for surrender process (Proposal 2001)

3.2. DETAILED PROCEDURES FOR TRANSMITTING A EUROPEAN ARREST WARRANT; USAGE OF THE EUROPEAN JUDICIAL NETWORK.

As mentioned earlier, The Framework Decision plays a significant role to simplify the method by supporting another instrument rather than counting on the long-established ambassadorial channels. All efforts were spent to have a simpler and faster procedure. It worths to mention that the issuing judicial authority has the opportunity to present the EAW straightforwardly to the implementing judicial authority provided that the place of the fugitive is acknowledged. However what is going to happen if the issuing judicial authority does not know the competent executing judicial authority? Necessary enquiries shall be conducted by the issuing judicial authority as well as checking through the contact points of the European Judicial Network (Council Joint Action 1998 ,p.4) , in order to obtain that information from the executing Member State a Schengen Information System (SIS) alert may be used. If this is not possible to call on the services of the SIS, Moreover Interpol channel may also be used to send out an EAW too. Certainly in reference to Article 10/3of FWD (Durmaz 2005).

The European Arrest Warrant could be sent out through any safe means able to producing on paper proceedings underneath circumstances letting the executing Member State to understand its validity by the issuing judicial authority. (FWD Article 10.4) The framework decision stipulates that whole problems related to the diffusion or the genuineness of any paper required for the implementation of the European Arrest Warrant has to be coped with by shortest links between the judicial authorities concerned, as well as the central authorities of the Member States. (FWD Article 10.5)

In addition to this the FWD designs a situation that the receiving the authority is not capable of to do something upon it, The European Arrest Warrant should be directly pushed to the competent authority by receiving entity and it will notify the issuing judicial authority relating thereto. (FWD Article 10.6)

European Judicial Cooperation Unit [16] (hereafter Eurojust) (http://europa.eu/agencies/pol_agencies/eurojust/ last visited 22 March 2008). comments on a particular problem with the EAW in its case work. An EAW, issued by the Slovak Republic for the surrender of an escapee in Belgium, was not forwarded to the proper judicial authority in Belgium. Since the EAW had been sent out throughout Interpol. Furthermore Schengen Information System (SIS) was not used anymore. Eurojust emphasized that the technical under construction of the SIS is not capable of housing the 'new' EU Member States. In this circumstance Belgium had not succeeded to understand the incident. The Report closes that 'Eurojust would like to underline the importance and effectiveness, where possible, of direct transmission between the issuing and executing judicial authorities.'(Mackarel 2007, pp. 37-65)

Commission has reported that All Member States (except MT and UK) have explicitly adopted the single form and provided for several possible means of transmission. A difficulty in this respect is that the Framework Decision does not provide for making an Interpol alert equivalent to a request for provisional arrest, unlike an SIS alert (Article 9(3)). Pending the application of the second Schengen Information System (SIS II), each Member State could remedy this with a national provision (Report from the commission 2005).

The provisions of this transmission organizing article are inspired from Article 6 of the European Union Convention on mutual assistance in judicial matters (29 May 2000). There is a key improvement in this article in that the European Arrest Warrant may be mailed in any ways, such as fax or e-mail, so that the genuineness of those documents is to be controlled and ideal privacy is guaranteed. Moreover the diffusion of a European Arrest Warrant must take the advantage of the method arranged by Member States under The Mutual Assistance Convention so that exact pacts get ready for founded authenticity in the event that surrender demands are sent by fax, e-mail etc.

[16] Eurojust is a European Union body established in 2002 to stimulate and improve the co-ordination of investigations and prosecutions among the competent judicial authorities of the European Union Member States when they deal with serious cross-border and organised crime

Furthermore, because the European Arrest Warrant is a typical adequately enforceable document, the communication of associated documents and confirmation of their accuracy are made extremely easy (Proposal 2001)

3.3. RIGHTS OF A REQUESTED PERSON.

The Framework Decision has a comprehensive nature to protect the fundamental rights of a fugitive. However, one can criticize that this new instrument has a limited amount of provisions planned to defend human rights of the requested person, most of which have recitation type and do not present physical safeguards for fundamental rights. This may be a consequence of granted reciprocal confidence. However it can be seen that a small amount of provisions to care for specific rights still exist. For example Article 11 of FWD ensures the right for the defendant being informed about the EAW and its contents. Furthermore it should be remembered that the fugitive can make use of to be assisted by a lawyer and also by a translator. However all these procedure shall be in line with the national regulation of the implementing member state. This circumstance certainly to the highest degree lessens the efficiency of the rights of the requested person, because national law differs extensively throughout the European Union. The provisions, stipulated in Article 5, letting surrender to be made depending on guarantee have superior possible influence. For instance FWD article 5(1) agrees to the surrender of a fugitive about whom has a judgment but this judicial decision was taken in absentia. The occurrence of this surrender is dependent on the condition that the issuing judicial authority provides a guarantee for the fugitive to have an option for demanding a second trial and to be in attendance at the ruling. If the substance of a European Arrest Warrant is a punishment of life time imprisonment, FWD Article 5(2) regulates the surrender to be conducted provisional on the issuing state have provisions in its law structure for a re-examination of the judgment after no later than 20 years (Fabry 2007)

The Framework Decision makes sure that the fugitive's human rights are esteemed, It is asked from the executing member states to make clear to the arrested person about the warrant and its substance. Besides the possibility of accepting the surrender decision

and the consequences should be informed. Moreover, it clearly requires the executing states to provide for a legal counsel and, if need be, an interpreter for the person under arrest (FWD Article 11) (Durmaz 2005).

As well as these common deliberations, unambiguous rights-founded terms try to find to ensure that the subject person of the EAW, on one occasion falls under arrest, have the complete fundamental rights secured by relevant nationwide regulations. It is inevitably true that the new tool does not assert to harmonize National law but rather refers to it as a common minimum basis of protection. The fugitive must be notified about the substance of the European Arrest Warrant that has been delivered against him or her. A lawyer and a translator should help out the requested person (Perignon & Dauce 2007)

Article 1.3 of the Framework Decision proclaims that "this Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union." It is essential, however, to learn how this stipulation may cover any convenient impact? If we take into consideration the functioning of the EAW and take the jeopardy of generalization, we come up with these stages; a. the distribution of the European arrest warrant; b. the execution of the arrest warrant. c. the apprehension of the fugitive (the person is assisted by a legal counsel and a translator)
d. the person is heard by the executing judicial authority, compliant with the law of the executing member state . e. the decision taken on surrender.

Obviously, the requested person is given the right at a legal proceeding to present any arguments against the legality of the process or as to refusal of the requirements of the Framework Decision. On the other hand, definite compulsory and not obligatory basis for non-execution of a warrant made available in the Articles correspondingly three and four of the Framework Decision.

These grounds are applied in definite unambiguous cases like the being of an official pardon, or a decision not to put on trial. Any of these foundations does not let a court to

decline on basis that the surrender may cause to stoppage to esteem human rights of the escapee in the issuing member state. Under these circumstances, it is vital to explain how is FWD Article 1.3 could be understood and implemented? (Fennelly 2007).

The Framework Decision captures the differences generated by the 1995 and 1996 Union Conventions among the cases in which the fugitive agrees to be surrendered to the authorities of the issuing State and cases in which he/she does not consent to be extradited. As a result, when the fugitive is captured by means of a European Arrest Warrant, the person should be made aware about the content and if available consent to be immediately surrendered to the issuing judicial authority. This Article was taken over relevant Article 6 of the 1995 Convention.

According to the commission's Proposal for a Council framework Decision on the European Arrest Warrant and the surrender procedures between the Member States; Starting From the time of his arrest, a fugitive is allowed to have the services of a lawyer and, if essential, a translator. This can be considered an important assurance in terms of the protection of individual rights. It is inevitably true that having being apprehended under a most likely unusual legal and linguistic circumstance for transfer to another Member State, the person should have legal counseling from the start of this of this process. This can be considered an assurance which is typical to the European Arrest Warrant and self-sufficient of the process appropriate in the Member State in case of arrest on the basis of a national arrest warrant (Proposal 2001)

3.4. KEEPING THE PERSON IN DETENTION

After the apprehension of a fugitive in line with a European arrest warrant, the FWD orders executing judicial authority to decide about whether to keep the requested person in detention. This new instrument also granted the judicial authority of executing member state a piece of competence to decide about releasing the requested person. There is no doubt about the responsibility of the executing Member State to take essential precautions to prevent the fleeing of the fugitive. These two official decisions should be in convenience with the law of the executing member state. (FWD Article

12). That is to say ; A member state which is executing a EAW has the opportunity to take essential and balanced coercive precautions against a fugitive consistent with the circumstances arranged by its own national law system, as well as the provisions on judicial review which are applied in the event that a person is taken into custody with a view of surrender (Proposal 2001).

3.5. CONSENT TO SURRENDER

3.5.1. Consented Surrender

It is highlighted by the commission that spectacular enhancements have been day by day achieved to produce performance, mentioning that challenging warrants are rendered approximately in 43 days to execute. This is controversial with "9 months for traditional extradition procedures. Moreover in case a person consents to his/her surrender, the procedure takes only 13 days overall (Mackarel 2007 pp. 37-65).

The Article about consented surrender has the inspiration of the Article 7 and 8 of the "Convention relating to the simplified extradition procedure between Member States of the European Union [17] " (1995), (hereafter the 1995 Convention) (http://europa.eu/scadplus/leg/en/lvb/l14015a.htm) especially in terms of the procedures for obtaining the person's consent. If he/she agrees, the warrant should be carried out as soon as possible. The instrument set up in this process is not different noticeably from the one stipulated in the 1995 Convention, that previously clearly derogated from the formal extradition mechanisms. But in the previous situation, the requested State kept the full power to evaluate both the legitimacy and the convenience of the surrender. At present, this power is being partially controlled by the provisions of the Framework Decision concerning the refusal to execute the European Arrest Warrant. Regarding the authority with jurisdiction to take the decision, it should always be a

[17] By an Act of 10 March 1995, the Council adopted the Convention relating to the simplified extradition procedure between Member States of the European Union (EU). This Convention aims to facilitate the application between the Member States of the European Convention on Extradition of 13 December 1957, by supplementing its provisions. The European Convention on Extradition was devised under the aegis of the Council of Europe, which is not a Community institution but an independent international organization.

judicial body, but Member States are able to decide to delegate that power to the executive prosecutor.

On the other hand the system of the 1995 Convention allowed Member States to proclaim that the person's approval was revocable. This limitation is not preserved in this new mechanism. Nevertheless the official procedures ,in order to notify the issuing authority about the person's consent have been simplified in FWD. According to the 1995 Convention the notice had a direct effect on the presentation of the extradition demand by the requesting State. Because the European Arrest Warrant operates as a request for surrender, the most importance of the notification of the persons consent is as information for the requesting state (Proposal 2001)

The Commission of European Communities maintained that All Member States have transposed the article of the Framework Decision about the rights of a requested person regulated by(FWD Article 11), with it being probable for the degree of detail to vary from one Member State to another, in particular with regard to the expression of consent. It should be noted that the improvements due to the arrest warrant also benefit the persons concerned, who in practice consent to their extradition in more than half the cases reported (Report from the commission 2005).

3.5.2. Ensuring Voluntarily Consent

The framework Decision has been very sensitive about the willingly consent of detained person and his/her fundamental rights. Furthermore it demands executing judicial authority to notify the arrested person of the content of warrant and about the option of agreeing to the surrender. Besides ; the FWD clearly calls for the executing states to grant lawful guidance and assistance of an interpreter for the fugitive (Durmaz 2007 pp. 66-83).

Article 26 of the Turkish Penal Code has provisions concerning ‘Voluntarily Consent first paragraph of this article reads that ‘there is no punishment for an individual of an individual which is created by using his/her right.’

3.6. THE HEARING OF THE REQUESTED PERSON

In the event that the requested person does not give his/her voluntary approval to his or her surrender as mentioned above ,the fugitive must be allowed to be heard by the executing judicial authority; Certainly this process shall be compatible with the law order of the implementing state. (FWD Article 14). For this reason, a court in the executing Member State shall decide on whether the European Arrest Warrant shall be executed after hearing the fugitive and hold appropriate to the national rules of criminal procedure.

The executing judicial authority shall carry out the European Arrest Warrant directly without the necessity to hear or verify the consent of the requested person if he or she escaped from detention or failed to comply with the conditions of return after being allowed to remain free from the beginning or being released after some pre-trial detention or benefiting from the provisions of delay of the European Arrest Warrant under Article 13(3) or from the provisional release under Article 14. The issuing Member State may be represented or submit its observations before the court (Report the Commission 2005).

It is inevitably true that The Framework Decision has also made a payment to confirming the rights of the fugitive with strict articles such as the right for the requested person to a hearing (Perignon & Dauce 2007)

3.7. SURRENDER DECISION

There are three important issues relating the surrender decision;
a). “whether the fugitive is surrendered” must be determined by the executing judicial authority without exceeding the time-limits.
b) In case the executing member state needs additional the information to get ready to determine on handing over the requested person, it has the opportunity to ask for that the essential supplementary information.

c) When the issuing judicial authority needs to send out further info about the fugitive, it can do this without caring about the time. (FWD Article 15)

In the Proposal of Framework Decision notification of the decision on whether to execute the European Arrest Warrant was also included. Some Scholars maintain that this Surrender decision article has been inserted from Article 10 of the 1995 Convention on Simplified Extradition. The notification is made straightforwardly by the executing judicial authority to the requesting judicial entity. This gives effect the principle of direct communication between judicial authorities. The central authorities remain in practice to facilitate this communication. The final decision shall be immediately notified. From a different point; The 1995 Convention was providing for a twenty-day deadline for notifying the decision to admit or reject surrender. This period was designed to enable an applicant State whose request for the simplified procedure was rejected due to request extradition by the previous procedure. This option is no longer the case, and the period is therefore eradicated with regard to the execution of a European arrest warrant**.** As implementation of EAW has become the rule and rejection has been the exception, it is preferable to lessen the notification phase and carry on right away to the formalities for surrender in order to enable it happen immediately (Proposal 2001).

In Turkish Extradition Law, according to the article 18 paragraph 5 of the new Turkish Penal Code , surrender or non extradition decision is given by the Council Of Ministers; therefore surrender process is a political operation in Turkey.

3.8. SURRENDER DECISION IN THE EVENT OF MULTIPLE REQUESTS.

It can be profiled in four stages in the event of multiple surrender requests about the same fugitive. a) When a European Arrest Warrant about a person is issued by two or more Member States, the FWD makes executing judicial authority competent to solve this dispute. The executing state should consider the significance and area of the crimes, the relevant dates of the European Arrest Warrants. Besides this it should be reflected on the purposes of either the prosecution or execution of a custodial sentence or

detention order. It is the executing state that carefully decides on which the European Arrest Warrant will be implemented.

b. The executing member state could ask for the opinion of Eurojust in the event mentioned above during making its decision.

c. The framework decision has also regulated a possible disagreement between an EAW and a third country's extradition demand. It is the competent authority of executing state that will decide which request takes precedence. It will do it by taking into consideration of all the conditions especially the significance and area of the crimes, the relevant dates of the extradition requests. Moreover the purposes of extradition demands, either the prosecution or execution of a custodial sentence or detention order.

d. The FWD concludes 'Decision in the event of multiple requests' phase mentioning Member States' responsibilities against the Statute of the International Criminal Court have priority upon all multiple request disputes. (FWD Article 16).

As it has been stated that Article 16 of the EAW points out a regulation on resolution of disagreement about decision in the case of various requests about the same fugitive. Here is a real example of this situation. Eurojust has given an opinion to the Netherlands regarding the warrants from Belgium and Germany for the same fugitive. The crime was a multipart fraud with elements of the offence going on in Belgium and Germany as well. Eurojust helped out in discussing a prosecutorial resolution that considers the place of the evidence and national law of the executing member state. In this decision of the Eurojust made Netherland,Belgium and satisfied (Mackarel 2007, pp. 37-65).

Conceivably, the most important job done by Eurojust relating to the EAW in 2004 was the conduction of a tactical assembly in Prague for delegates from all of the Member States. The representatives from the European Judicial Network, the Council Secretariat and the European Commission also attended to the meeting. The meeting was aiming to make clear to the lawful and realistic execution of the EAW. The recognition of barriers to the implementation of warrants, strategies for challenging warrants and the infringement of time restrictions were important subjects under debate. The meeting occurred in October 2004, and at that time the EAW was not operating completely

throughout the European Union. There were some Member States entirely digested the provisions of the FWD. They were making use of this new chance among them. By the help of this official gathering a variety of difficulties concerning early years of this new extradition tool had been encountered in this early phase of operation of the EAW. Done by the European Commission as well.

As an evaluation of these hindrances, the Eurojust Report reads in its report that: 'Initial experience of the EAW indicates that it will take both time and some amendments in order to be fully effective. Despite the fact that almost all Member States have implemented the EAW into their national legislation, they did so according to their own methods of implementation, each with their own requirements. The problem so far encountered by Member States consists of insufficient regulation of the communication language, delivery terms and means of translation. Concerning the transmission of the warrant, it seems that there is no uniformity. It appears that in the near future clarification as well as unification of the ways of transmission should be put in place so that the system works more effectively" (Eurojust Report 2004,p. 82 http://www.eurojust.eu.int/press_annual.htm).

It is inevitably true that many of the implementation difficulties with FWD can be solved by the help of the Member States. Especially typical way of state execution problems with the EAW. It is blurred that if the 'amendments' of Eurojust reports are oriented from the FWD or from the implementation of member states.

One of the main discussion subjects of the meeting in Prag was about the guiding principles for executing member states to determine in the event of multiple requests. The Report points out that 'effective and early co-ordination between the competent authorities of the Member States concerned, before the issue of an EAW, should minimize the number of cases of multiple requests for the same person.' The Report explains strategies for a variety of conditions that numerous requests may be asked for and the features to be taken into consideration for deciding among the EAW s. This assistance founded on standards issued in the Eurojust Report of 2003 (Eurojust Report 2004 p. 82 http://www.eurojust.eu.int/press_annual.htm).

It is useful to decide on which judicial decision should take legal action as a predecessor in multi jurisdictional cases. Furthermore as mentioned in Eurojust 2004 Report, it is proposed by Eurojust to offer support to judicial entities of all Member States in determining prosecutorial policy in such situations, This movement is over riding the provisions Article 16(2) of the Framework Decision without limiting only executing state (Mackarel 2007, pp. 37-65).

3.9. TIME LIMITS AND PROCEDURES FOR THE DECISION TO EXECUTE A EUROPEAN ARREST WARRANT

One of the vital specialties of the framework decision is the fast procedure and ,of course, time frames enforced in terms of implementation of an EAW and the concrete surrender of a fugitive. As well as there is a broad announcement that a European Arrest Warrant should be handled “as a matter of urgency”. The Council insisted that the concluding verdict of the executing judicial authority about the execution of an EAW must be completed in ten days if there is an approval from the fugitive, on the other hand if there is a lack of consent ; sixty days are permitted. (FWD Article 17) (Planchta 2003)

In some situations especially a European Arrest Warrant can not be implemented within 60 days after the receiving of the warrant the executing member state must without delay report to the issuing member state and notify the reason for the non-execution of the European Arrest Warrant and present explanation for the postponement. The Framework decision ,in these exclusive circumstances, grants an additional thirty days for the executing judicial authority to give its final decision about surrender request. In case there may be a refusal from executing member state to a surrender request; the executing member state must explain the causes of negative response to the issuing member state. In extraordinary conditions on which the executing judicial authority has exceeded time restrictions, it has to report to Eurojust, of course with the motives for the wait.

Furthermore If a judicial authority of a member state exceeds the time limit repeatedly, over and over. It is obligatory for that Member State to notify the Council with an observation about evaluation of the execution of European Arrest Warrant Framework Decision with an eye from a Member State. (FWD Article 17)

As it is worth to mention the time limits and procedures to execute the EAW are regulated in Article 17 of the FWD. Initially it is needed to give this new procedure as a common regulation, the entrance of 'a matter of urgency' about how to deal with an EAW. This aspect of the new instrument is a leading factor to make the process faster. In other words a sprit of urgency is given to each European Arrest Warrant paper.

In some conditions that the wanted person does not resist to be surrendered, ten days period is seen enough to take the final decision to execute the EAW. On the contrary the fugitive does not accept to be surrendered; the time restriction goes up to 60 days. No more than in extraordinary conditions is the time boundary going to be widened with an additional 30 more days. In addition, whilst the executing judicial authority can not accomplish the time limits established in the Article mentioned above. It must report to Eurojust regarding causes for the delay. Likewise, Either the individual agrees to surrender or not, according to Article 23 of FWD, the fugitive must be surrendered no more than ten days after the concluding verdict to execute the EAW has been officially issued (except serious humanitarian reasons affect). Besides; Article 17.4 of the FWD reads that "Where in specific cases the European Arrest Warrant cannot be executed within the time limits laid down in paragraphs 2 or 3; the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for delay. In such case, the time limits may be extended by a further 30 days" (Apap & Carrera 2004).

There are different academic views regarding the issue mentioned above. A pioneering modernization feature was introduced by the beginning of new instrument. That is established in Articles 17 and 23 of the Framework decision. These two provisions bring in the time limitations and measures supposed necessary to implement an EAW. In addition to the well-organized, fast surrender method of the requested person.

Pertaining to this innovative element, it is proclaimed by some civil independence leaning people that the initial principle of the EAW can be to ease surrender formalities with introducing fast and speedy time limits to extradition world. It is inevitably true that it may be quite difficult to make sure the human rights of the person, a subject of an EAW, aimed in this speedy procedure established by the FWD that is focused on national law-enforcement agencies (Apap & Carrera 2004).

There is another point of view regarding time restrictions. The very short time limits imposed on both the execution of the EAW and the actual surrender of the requested person are other important feature of the new tool. There is a general statement to the effect that a EAW warrant shall be dealt with and implemented "as a matter of urgency", the Council demands that the final decision on the execution of the EAW be made either within ten days. This is the case where the fugitive gives consent to his/her surrender. In the cases that the requested person does not consent to his/her surrender , 60 days period is the time boundaries. In other extra ordinary cases Where, in specific circumstances if the European Arrest Warrant cannot be executed within these time limits, the executing judicial authority must instantaneously notify the requesting judicial authority and present the reasons for the holdup In this case, the time limits can be added a further 30 days. Moreover, Article 23 lays down that the fugitive shall be surrendered no more than ten days following the final decision on the execution of the European arrest warrant. However, if the surrender of that fugitive within this period is not achieved due to some circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities of member states must immediately contact each other and have the same opinion on a new surrender date. In that situation, the surrender is going to happen within ten days of the new arranged date (Planchta 2003).

It is claimed that EAW is a faster procedure. Why? Since The Framework Decision entails strict time boundaries both for the execution of arrest warrants and for the surrender of the fugitive. The executing Member state has ten days to have a final decision in relation to the execution of the EAW in the event that the requested person consents his/her surrender this can be named as a kind of simplified extradition

procedure or within the period of 60 days in other cases. However an EAW cannot be executed within these time limits, the time limit may be prolonged by an additional 30 days. After the final decision, the requested person must be surrendered within a ten day period which can be extended ten more days due to circumstances beyond control (Durmaz 2007).

At the same time as the EAW is intended at advancing the tempo of surrender over traditional extradition conventions and specific time limits are established in the Framework Decision for the implementation of warrants (FWD Articles 17 and 25) the Commission has already predicted that the time restrictions can be exceeded ,mentioning that 'some Member States have not agreed to put a time limit on their higher courts, or have set a maximum period for the proceedings which could exceed the norm of 60 days or even the ceiling of 90 days in the event of a final appeal' According to Article 17(7) , executing judicial authorities which can not obey the time limits should inform Eurojust with the reasons for delay (Payne 2006)

The European Arrest Warrant lets judges to attain the surrender of fugitives extraordinarily rapidly, because of the concerning time limits brought in by the Framework Decision. This time limits help produce much more efficient procedures than the time limits applicable under normal extradition procedures. Without a doubt, Due to the European Arrest Warrant, the application for the surrender of a person is managed approximately in less than five weeks. Furthermore ten days are deadline in the event that the person consents to his/her surrender. While under the traditional extradition formalities such requests can be awaited up to a year before being examined. Nevertheless, as already stated, the FWD does make available strict time-limits to encourage effectiveness. As soon as the fugitive gives consent to his/her surrender, the final conclusion on the execution of the European Arrest Warrant should be made within ten days after the given of consent.

In other circumstances, the final decision about the implementation of the European Arrest Warrant should be taken within a phase of sixty days following the arrest of the fugitive. Moreover The Framework Decision has regulating articles for the cases where

the European Arrest Warrant cannot be executed within the time-limits. The FWD mentions that the sixty days time-limit can be prolonged for an additional thirty days. During these extensions The Eurojust shall be notified about the delay. The level of reporting to Eurojust when a time-limit is breached has increased in initial implementation years., the ninety-day time-limit was not respected in eighty-one cases and seventy-two breaches were reported to Eurojust by ten Member States in the year 2005 (Perignon & Dauce 2007).

The speed of the arrest warrant comes not only from its being a completely judicial procedure, but also from the nature of having a sole form, numerous means of transmission and rules for procedural time restrictions. It is accepted by the commission that In general, the Member States have transposed these points in to their legal system successfully. It is as an interim measure approximated that, Due to the entry into force of the Framework Decision, the average time to execute a warrant has fallen from more than nine months to 43 days.

The common cases in which the person gives consent to his/her surrender. In this consented surrender cases the average time taken is 13 days. Different from the international extradition procedure, the implementation of the arrest warrant is exposed to specific time limits. FWD Articles 17 and 23 are the regulating ones in this timing. It is claimed by the commission that On the whole, the Member States in general accomplished their assignments in this direction.

It is repeatedly stated by the commission that most surrender cases appears to conducted in the time limits laid down in the FWD. On the other hand, when it came to it of an appeal, some Member States have not agreed to put a deadline on their higher courts. (CZ, MT, PT, SK, UK), or have set a maximum period for the proceedings which exceeds the norm of 60 days (BE) or even the ceiling of 90 days (FR). It is inevitably true that a domestic appeal is not in itself an exceptional circumstance. Whereas important delays are not common, Eurojust having been informed of them (Report from the Commission 2005).

3.10. SITUATION PENDING THE DECISION

If a judicial authority has sent out a European Arrest Warrant in order to conduct a criminal trial, the FWD has some specific regulations about this condition. The executing state has two options. One is to accept the warrant and hear the fugitive, other is accepting to transfer the requested fugitive for a short-term to the issuing state. In this case both the issuing and executing judicial authorities should agree upon the grounds and the length of the short-term transfer of the requested person.

In the case of short-term transfer, since it is a component of the surrender process, the fugitive should be given the opportunity to go back to the executing member state in order to be present at the inquiries about him/her (FWD Article 18).

Article 34(4) of the Framework Decision necessitates the Council to prepare a review of the application of the EAW. For this reason the European Commission shaped a report in February 2005, assessing the operation of the EAW. This Report reads that "the UK along with Belgium, Ireland, Hungary, Austria and Sweden considers that it is not necessary to transpose the provisions of Article 18 because the existing rules on MLA are sufficient. It is somewhat unclear why the UK has been criticized for its implementation of this Article of the Framework Decision, perhaps this is because a limited number of Member States apply the scope of the EAW slightly differently in that they are able to issue EAWs to return persons to act as witnesses in criminal prosecutions. The UK does not make use of the EAW procedure in this manner. If the UK certifies an EAW request from another Member State then we must proceed to an extradition hearing as required by Article 19 of the Framework Decision. When it is clear that an individual cannot be surrendered in the near future(i.e. they are already serving a lengthy custodial sentence here for other domestic offences) then Section 37 of the Act allows for a person to be temporarily surrendered to the Issuing State to stand trial as described in Article 18(1)(b) and 18(2) of the Framework Decision. We would expect Member States who are seeking the return of an individual to assist in a criminal prosecution (i.e. they are not accused of the conduct themselves) then we would expect them to go through the usual MLA channels. We are of the opinion that our

implementation of this Article is satisfactory and is in keeping with the spirit of the Framework Decision" (http://www.publications.parliament.uk/pa/ld200506/ldselect/ldeucom/156/156.pdf)

3.11. HEARING THE PERSON PENDING THE DECISION

Hearing the person pending the decision is done in two steps. One is ,in reference to the law of the demanding court of the Member State, that A judicial authority must hear the fugitive who is assisted by another person. The other step is , in line with the law of the performing Member State and with the circumstances concluded by common arrangement of issuing and executing member states, the fugitive must be heard

With the purpose of guaranteeing the fair functioning of the hearing process mentioned above, the competent executing judicial authority can appoint an additional judicial authority of its Member State to join in the fugitive's hearing process. (FWD Article 19). The framework decision intended to differ hearing process of the requested person (FWD Article 14) from the hearing the person pending decision (FWD Article 19) by assigning two different articles since these two hearing process have different natures.

3.12. PRIVILEGES AND IMMUNITIES

As much as the immunities are the matter. FWD article 20 stipulates that if the fugitive have the benefit of a privilege or immunity, The European Arrest Warrant about him/her cannot be carried out if not the executing judicial authority is informed that the privilege or immunity has been removed. Depending on the sort of privilege or immunity, the state entity capable of removing the immunity can be, the executing State or another State i.e. if the requested person enjoys a definite immunity like a Parliamentary or a minister in a government. For a parliamentary, if power to waive the privilege or immunity lie with an authority of the executing Member State, the executing member state must deliver a send to the waiving authority. For a minister, Where power to waive the privilege or immunity lies with an authority of another State

or international organization it is the job of the issuing member state to notify to the waiving authority and to ensure the removal of the immunity (Planchta. 2003).

Furthermore if there is a privilege and an immunity benefitted by a fugitive the time limits of executing an EAW can not begin elapsing if not the executing judicial authority is notified that privilege or immunity has been given up. The executing judicial authority must guarantee that the substantional environments essential for successful surrender are provided whilst the fugitive does not have privilege or immunity. (FWD Article 20)

In Turkish Penal Code (here after TPC) the immunities are not written down for the extradition process. Article 18 of the TPC is the main source of this issue and in this article immunities a privileges are mot mentioned. Article 83 of Turkish Constitution reads that "Members of the Turkish Grand National Assembly shall not be liable for their votes and statements concerning parliamentary functions, for the views they express before the Assembly, or unless the Assembly decides otherwise on the proposal of the Bureau for that sitting, for repeating or revealing these outside the Assembly." (http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm)

3.13. COMPETING INTERNATIONAL OBLIGATIONS

For the situations that, a fugitive who will be surrendered to a Member State from a non EU member State, the provisions of FWD can not influence the responsibilities of the executing Member State under circumstances where that person is protected by provisions of the arrangement by a member state and third states.

The FWD obliges the executing Member State to apply all indispensable precautions immediately asking for approval of the State which will surrender the fugitive. All these actions are done for the fugitive to be surrendered to the issuing member state. The time limits of the surrender process does not begin unless this kind of specialty regulations loose its applicability. In the course of the decision of the extraditing State,

the implementing member state should guarantee that all the substational circumstances required for successful surrender kept done. (FWD Article 21)

3.14. NOTIFICATION OF THE SURRENDER DECISION

The FWD orders that the implementing judicial authority shall inform issuing authority without delay about the verdict of its own, and about what steps will be acquired in terms of the European Arrest Warrant. (FWD Article 22)

In Turkish Procedural Law article 36 determines that all notifications in the trial level and the decisions to be executed shall be conducted in written through the public prosecutor's office.

3.15. TIME LIMITS FOR SURRENDER OF A REQUESTED PERSON

The surrender process should be finished immediately at a time arranged by issuing and executing judicial authorities as a rule. After the concluding verdict on implementation of the warrant has been given by executing judicial authority, ten days are left to hand over the requested person to requesting judicial authority. Whilst ten days elapsed the requested person must have been on the hands of the issuing judicial authority. However there may be some conditions that are not controlled neither issuing nor executing member states. The framework decision has also designed this exception. In that case it is ordered by FWD that all the concerning states both issuing and executing states instantaneously get in touch with each other and consent about a fresh surrender day. And again above mentioned within the ten days the fugitive should be in the territory of issuing state. There are some humanitarian reasons for extraordinarily delaying the execution of a European Arrest Warrant for a short term by the executing state. Such as whilst there may be delaying for serious humanitarian reasons, for example if there are significant material conditions to trust that this grounds could obviously put in danger the fugitive's existence or healthiness. But the FWD does not stipulate that this extreme exception lasts forever. As soon as the hindrances to execute the warrant execution of the European Arrest Warrant pass away; The executing

member state should instantly report to the issuing member state and arrange on a new date for surrendering. And “ten days rule” applies. In the circumstances of humanitarian reasons delaying and that the situation of normal surrender process (but although ten days expired but the fugitive has not been surrendered), the requested person can not be kept in the custody. He/she must be released. (FWD Article 23)

FWD Article 17 regulates “the time limits and procedures for the decision to execute the European Arrest Warrant.” But FWD Article 23 determines the time limits of surrender after the surrender decision is given by the executing member state.

3.16. POSTPONED OR CONDITIONAL SURRENDER

Following making a decision to carry out a European Arrest Warrant, The executing judicial authority has the opportunity to put off the surrender of the fugitive in two options .On one hand ,the requested person might be taken legal action in the executing Member State. On the other hand, whilst the fugitive has already a judgment(due to a crime that is different from the crime mentioned in the European arrest warrant) that can be served in area of executing state by him/her. This type of action is called by the FWD “Postponed Surrender” or “Conditional surrender” is somewhat different in some senses. Rather than postponing, the executing judicial authority can provisionally surrender the fugitive to the issuing Member State. But there should be some grounds to be concluded both by the asking and responding judicial authorities. Only upon these binding and (on all the authorities of the issuing Member State) written circumstances, “Conditional surrender” may take place . (FWD Article 24)

Turkish Criminal Procedural Law article 231 has provisions about relevant postponing of the declaration of the court verdict. Since the major aim of the punishment is the correction of the offender and reintegrate him/her to the community, Turkish Criminal Law has some useful provisions regarding delaying the disclaim of the judicial decision.

3.17. TRANSIT

In this part ,the FWD has regulated the detailed procedures for surrendering the fugitive. Every Member State has to allow the transfer of a requested person throughout its territory. But there is an exception. whilst the state, in which the person is being transported for surrender , benefit from the possibility of refusal if the transit of one of its nationals or one of its residents is wanted with the intention of the carrying out of a custodial sentence or detention order. Other than this exemption all member states have to let the process go on condition that some info should be transmitted to the relevant state. The identity ,nationality of the fugitive, the presentation of a European Arrest Warrant, information about the crime are necessary data to be given to the transit member state. In the event that the fugitive, who will be prosecuted, is a national or a resident of the transit state, this state has an option to allow the transportation of the requested person provided that following the hearing, the fugitive should be returned to the transit Member State to serve the custodial sentence or detention order approved against him in the issuing Member State.

FWD also orders all member states to assign an official entity to get transit demands and essential formalities papers, plus any other official communication about transit requests. Furthermore The General Secretariat of the Council has to be informed in written about this entity by all Member States to ensure the process working well. In case the transportation of the fugitive is done by air (plain) lacking a planned stop, transit request will be out of question. On the other hand, if an unprepared stopover takes place the issuing Member State will start the relevant procedure. (FWD Article 25) The text of transit article is inspired partly by Article 16 of the 1996 European Union Convention on Extradition [18] (hereafter 1996 Convention) (http://europa.eu/scadplus/leg/en/lvb/l14015b.htm) that it extends. “No Member State

[18] The aim of the Convention on extradition, now replaced in most cases by the Framework Decision on the European arrest warrant, was to facilitate extradition between the Member States in certain cases. It supplemented the other international agreements such as the European Convention on Extradition 1957, the European Convention on the Suppression of Terrorism 1977 and the European Union Convention on Simplified Extradition Procedure 1995.

may refuse transit on its territory of a person with respect to whom a European Arrest Warrant h**as** been executed." It is methodically warned of all transits taking place on a member state's territory and member state will make sure that whether specific safety measures shall be in use when the person is in transit. A member state can permit the officials of the issuing State or the executing State to attend the person on its territory by themselves. During this period. The person must be escorted by some supporting documents: evidence of identity, the European Arrest Warrant, with a translation, the Decision of the executing judicial authority, with a translation. The provisions of the 1996 Convention regarding over flight of the territory are kept unbothered.

The Framework Decision does not have manipulating relations with non-member states. In this case, on the other hand, to the degree that the customary documents relating to the extradition procedure should be eliminated. It shall be essential to confirm earlier than transit that the authorities of the country crossed are convinced with the presentation of the European Arrest Warrant instead of the documents regularly necessary (Proposal 2001).

4. EFFECTS OF THE SURRENDER

4.1. DEDUCTION OF THE PERIOD OF DETENTION SERVED IN THE EXECUTING MEMBER STATE

All time passed under detention resulted from the carrying out of a European Arrest Warrant has to be subtracted by the issuing member state. It shall be omitted from the whole phase of imprisonment to be served as a consequence of a custodial sentence or detention order being passed in the issuing Member State by that member state. In order to make this deduction , executing member state has to inform the issuing state about the detention period. (FWD Article 26)

It is worthy to mention again that Article 26 of the Framework Decision that offers positive extra safeguards with respect to the detention of the fugitive. The period of detention resulting from the execution of a European Arrest Warrant should be taken away by the issuing member state from the entire period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order (Perignon & Dauce 2007).

The development ,as a result of new surrender system, introduced by European Arrest Warrant is benefited by the fugitives as well. These fugitives are surrendered with their initial consent in more than half of the cases reported. The Framework Decision is more accurate than previous provisions, in terms of the right to the deduction from the term of the sentence of the time of detention served (http://ec.europa.eu/justice_home/fsj/criminal/extradition/fsj_criminal_extradition_en.htm last visited 0n 2008-08-02).

In the traditional extradition system, the subtracting the time period served in prison in the surrender process out of the total sentence to be served was not an issue. This Article 26 of FWD treated this weakness. The State which is executing the arrest warrant shall send the requesting State an exact calculation of the time spent in custody by the fugitive (Proposal 2001).

Turkish Penal Code Article 16 has a similar provision regarding deduction of the detention period. It reads that "Regardless of the crime place, the time passed under detention, custody or the time of imprisonment shall be subtracted from the whole imprisonment verdict rendered by the Turkish Judicial Courts."

4.2. IMPLEMENTATION OF TURKISH CRIMINAL LAW .

According to article 10 (a) of the old Turkish Criminal Code, it reads that "If a Turkish national or a foreign national committed a crime in a foreign state, and the action was regulated under Turkish criminal jurisdiction . The article in favor of the accused person was applicable. The national Judge had the obligation to prefer the more lenient of the Turkish Code and the criminal code of the place that the crime was conducted.

There are two exceptions for the situation mentioned above. Firstly, If the crime was against Turkey and intended to damage the republic of Turkey. Secondly, if the code of the place where the crime was committed breaks Turkey's public order or infringes the international obligations of Turkey. The 'more lenient principle' does not apply. For instance , there is a foreign code having Islamic orientation and favors the accused person, this will not be applied due to the public order principle of Turkey.

In order to give a current official view of New Criminal code Article 19/1 Turkish new criminal code, it stipulates that ' the Turkish Courts have to consider the upper level of punishment in the criminal code of the country and the sentence of Turkish judgment can not exceed these limits. This consideration is out of question if the offend was done against the security or this advantage of Turkish Republic or against the interest of a Turkish National or a legal person created under Turkish Law.(Article 19/2) (Yenisey 2008,p.66)

4.3. POSSIBLE PROSECUTION FOR OTHER OFFENCES OR THE RULE OF SPECIALTY.

The FWD stipulates that every member state might inform the General Secretariat of the Council that, regarding its communications with other Member States that have given the same notice, the approval is assumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender. In other words the crimes or prosecutions which are not mentioned in the warrant can not be dealt with by the issuing member state without the consent of the executing state. Moreover there are some situations for this specialty rule to apply. Here are the circumstances:

a. if the person has a chance to depart from the issuing Member State and he/she has not left the issuing state in 45 days after his/her last release or may be he/she left but has returned to issuing state back.
b. If the crime is not carrying a punishment of a custodial sentence or detention order;
c. If the criminal procedures do not provide for application of a measure limiting freedom of the fugitive;
d. Whilst the person could be legally responsible of a punishment or a precaution not relating to the dispossession of personal liberation, specially a fiscal fine or a precaution . Although the punishment or precaution can grant a restriction of individual freedom;
e. If the person approved his/her surrender, he or she gave up the specialty rule in line with the provisions of the FWD relating to “consent to surrender”(FWD Article 13)
f. If the fugitive subsequent to his/her capture, has explicitly given up right to the specialty rule pertaining to particular crimes prior to surrender. Rejection must be presented in front of the competent judicial authorities of the issuing Member State and must be in official paper compliant with issuing State’s law. The rejection of specialty rule should be dealt with sensitiveness to make sure that the fugitive give up his/her right willingly and in attentiveness of the results. In order to secure this process the fugitive must take the consultation of a lawyer.

g. If the implementing judicial authority that surrendered the person approves the abolition of specialty rule;

In these seven grounds plus implicit consent the rule of specialty directly applies. Other than this, the rule of specialty does not apply(FWD Article 27).

It is inevitably true that the possible impacts of the surrender are managed in Arts. 26–30 of the FWD. Throughout these articles it can be found that an innovative tool that is the non-compulsory removal of the self-styled 'principle of specialty'. This instrument grants that a fugitive must not be put on trial because of any crime which is not similar to the offence of surrender. So there is now an implicit consent to execute a custodial sentence or a detention order for an offence different from the one for which the suspected person was surrendered. It should be noticed that a genuine hazard may appear in the execution of this instrument. In other words, pretty possible exploitation of this tool may come on to stage. For instance, a judicial authority of Member state issues an EAW based on a catalog crime (Art. 2.2). At the same time as the actual basis on which the legal suit will happen are rather diverse in nature and substance. In this manner, the issuing judicial authority can stay away from a probable negative response. In practice, it is believed that it may be pretty difficult to organize and limit such kind of deceptive with use of the provisions set inside the EAW (Apap & Carrera 2004).

Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States symbolizes an effort to get rid of one basic extradition principle: rule of specialty. Earlier , the 1995 Convention on extradition had some provisions in this abolition period, by turning around the presumption: instead of assuming – as done traditionally – the lack of consent by the requested State for further prosecution and/or re-extradition of the extraditurus, the Convention showed that the approval of prosecution and serving the punishment of other possible offences are implicit, unless confirmed or else. FWD pursues this model excluding that whilst the solution has been founded on a scheme of notices to be suggested by Member States.

FWD Article 27(1) makes available that each Member State may notify the General Secretariat of the Council , in its relations with other Member States that have given the same notification; Consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender. Except for that, the Council has approved the long-established method for non- trial, escorted by seven conditions in which this rule of specialty shelter does not apply. Related resolutions have been accepted for re-surrender of the fugitive to another Member State (FWD Article 28). It should be noted that this new method purposely supplies the approval of the executing judicial authority for the surrender of the extradition to another Member State which must or might be turned down on the same basis that is laid down for the non-execution of the European Arrest Warrant itself (Planchta 2003).

FWD has supported to confirming the rights of the fugitive in its articles with reference to the right for the requested person to a hearing. Conditional on restricted exclusions, on one occasion surrendered, he or she can not be taken legal action against, sentenced or if not left without his or her freedom for an crime conducted up to the surrender, a part from that for which he or she was surrendered (Perignon & Dauce 2007).

Article 27 of FWD protects the elimination of the principle of specialty. The sole limits of this specialty exclusion are the offences on the negative list provided for by the statement of Article 27 and the situations that Article 28 apply to (extraterritorial judicial authority used by the issuing Member State) or Article 30 (general pardon or limitation periods relevant to the offence in the Member State that executing) (Proposal 2001).

Turkish Penal Code Article 18 Para 8 explicitly claims that the surrendered person can be exposed to trial only in terms of the subject of the extradition request. Namely rule of specialty is strictly applauded in Turkish Extradition Law.

4.4. SURRENDER OR SUBSEQUENT EXTRADITION

FWD reiterates that every Member State can inform the General Secretariat of the Council that, in its working relations with other Member States giving very similar announcements. After the executing judicial authority surrenders the fugitive to issuing state. The question is that "Can the same fugitive be surrendered to an other requesting state different than the last executing state on the basis of a European Arrest Warrant issued for an offence committed prior to his or her surrender"? FWD replies this question positively .This type of approval is assumed to have been given with the process of initial surrender. But for in a special circumstance that the executing member state mentions "no subsequent extradition" in surrender decision. Nevertheless the consent for subsequent extradition is assumed implicit. There are some circumstances that without the consent of the executing Member State, the fugitive can be surrendered to a Member State other than the executing Member State following a European Arrest Warrant written for any offence committed preceding to his or her surrender:

a. if the fugitive having enjoyed a chance to depart from the issuing Member State and he/she has not left the issuing state in 45 days after his/her last release or may be he/she left but has returned to issuing state back.

b. If the person approves to be given to a Member State different from the executing Member State because of a European Arrest Warrant. Approval must be presented in front of the competent judicial authorities of the issuing Member State and must be in official paper compliant with issuing state's law. The rejection of specialty rule should be dealt with sensitiveness to make sure that the fugitive give up his/her right willingly and in attentiveness of the results. In order to secure this process the fugitive must take the advice of a lawyer.

c. If the fugitive is not subject to the specialty rule.

In these three circumstances in addition to implicit consent, subsequent extradition may apply or directly applies. Other than it does not apply.

The executing member state approves a subsequent surrender to a different Member State in accordance with the next regulations:

a. The demand for consent must be presented in accordance with the provision about Transmission of a European Arrest Warrant (FWD Article 9), escorted by the information stipulated in provision on Content and form of the European Arrest Warrant (FWD Article 8-1) and plus a translation of one of the official languages of the executing state (FWD Article 8-b)

b. Consent should be offered whilst the crime is a matter for to surrender in line with the provisions of this Framework Decision.

c. The deadline of the decision on consent is no more than 30 days starting from the after receiving of the demand.

d. Consent request has to be turned down if it is either a matter for "Grounds for mandatory non-execution of the European arrest warrant" (FWD Article 3) or "Grounds for optional non-execution of the European arrest warrant"(FWD Article 4). The circumstances of "Guarantees to be given by the issuing Member State in particular cases" (FWD Article 5), the issuing Member State should provide the assurance required

e. Even though there is implicit consent, a surrendered fugitive can not be extradited to a third State without the permission of the surrendering Member State. Consent to extradite the requested person is granted by again executing member state in compliant with its law system and its being party to relevant the conventions(FWD Article 28).

Interrelated resolutions have been admitted for re-surrender of the fugitive to another Member State (FWD Article 28). It should be remaindered that this new method purposely supplies that the approval of the executing judicial authority for the surrender of the extradition to another Member State must or might be rejected on the same basis that are put down for the non-execution of the European Arrest Warrant itself. (Planchta 2003).

4.5. HANDING OVER OF PROPERTY

The FWD regulates the procedure for the evidence obtained from the fugitive. This is either requested by the issuing state or done by the executing state's own enterprise.

The property seized should be handed over the issuing state in order to be used either as evidence or as a result of the offence. The handing over of the property mentioned must be occurred even if the EAW can not be executed because of the fugitive's decease or flee.

Whilst the possessions is desired regarding an awaiting criminal procedures, the executing state may keep it for the short term or give away to the issuing Member State provided that it is returned(FWD Article 29).

4.6. EXPENSES

The executing Member State must pay the operating costs that occurred in its area for the execution of a European arrest warrant. The issuing Member State has to pay every one of other expenses (FWD Article 30).

5. GENERAL AND FINAL REGULATIONS

5.1 RELATION TO OTHER LEGAL INSTRUMENTS

Without prejudice to their application in relations between Member States and third States, by the entry into force of European Arrest Warrant Framework Decision (from 1 January 2004), some parallel provisions of previous conventions are replaced by new provisions of the FWD. The previous conventions are ;

a. The European Convention on Extradition (1957) and its added protocols of 1975 and 1978,

b. The European Convention on the suppression of terrorism (1977)

c. The Agreement between the 12 Member States of the European Communities on the simplification and modernization of methods of transmitting extradition requests (1989)

d. Convention on simplified extradition procedure between the Member States of the EU (1995)

e. The Convention of 27 September 1996 relating to extradition between the Member States of the European Union;

f. Title III, Chapter 4 of the Convention on implementing the Schengen Agreement of 1985 on the gradual abolition of checks at common borders(1990)

The FWD grants Member States to be able to continue to implement two-sided or many-sided valid agreements whilst they help the objectives of this Framework Decision to be extended or enlarged and assist to make straightforward or ease further the measures for fugitive's surrender especially in terms of

a. Setting up time limits narrower than Article 17,

b. Expanding catalog crimes (FWD Article 2-2)

c. Further restricting the grounds for refusal (FWD Articles 3, 4)

d. Lowering the doorstep provided for in Article 2(1) or (2) (FWD Article 31).

Article 31 of the framework decision has an intention to illustrate the finalizing of the major changes turned by the new surrender system. Especially in terms of the relations between Member States. All legal tools ruling extradition law are substituted by the

European Arrest Warrant in relations between Member States. The Member States are obligated to notify the Secretary-General of the Council of Europe in relation to Article 28 of the 1957 Convention accordingly. The extradition articles of the 1977 Convention on terrorism are also replaced ,to the degree that, the rule of double criminal liability is got rid of. Additionally, the extradition provisions in European Union instruments which protect the rule that "a Member State refusing to surrender its nationals would be required to submit the case to its prosecution authorities" is not applicable by the introduction of the Framework Decision on the European Arrest Warrant **.**The more favorable provisions of instruments signed between some of the Member States of the Union (Benelux Convention, bilateral treaties, laws of the Nordic States) are not influenced . It will be for the States troubled to arrange if they widen between themselves the lawful scale of the European Arrest Warrant with the purpose of maintaining their preceding law. For instance, Article 10 (1) (b) of Council Framework Decision 2001/413/JAI of 28.5.1 (OJ L149, 2.6.1) (Proposal 2001).

There is a Statement by Denmark regarding this issue. In this statement the uniform valid legislation between the Nordic States agrees to the instructions brought by the Framework Decision to be broadened and widened and assists to making simpler and ease much more the steps of fugitives` extradition's. Denmark, Finland and Sweden therefore continue on to implement the regular legislation in force among them.(in Denmark: the Nordic Extradition Act (Act No 27 of 3 February 1960 as amended by Act No 251 of 12 June 1975, Act No 433 of 31 May 2000 and Act No 378 of 6 June 2002)) To the degree that it allows the instructions of the Framework Decision to be expanded or broadened and assists to simplify or ease supplementary the procedures for extradition of the fugitive that is the subject of European Arrest Warrants (Statements 2002).

5.2. TRANSITIONAL PROVISION

Surrender demands accepted earlier than 1 January 2004 was handled continue to be regulated by earlier existing tools earlier that the FWD, regarding extradition (FWD Article 32).

5.3. PROVISIONS CONCERNING AUSTRIA AND GIBRALTAR

The FWD has a provision related to Austria and Gibraltar. On condition that Austria did not adopt the Article 12(1) of the "Auslieferungs- und Rechtshilfegesetz" Extradition Law of Austria and this law does not consent the surrender of an Austrian to a EU member state or a third state., it has given time until 31 December 2008 to modify that inconvenience, Up to that deadline Austria has the opportunity to refuse the execution of EAW about a requested person Who is an Austrian citizen and He/She has committed a crime which is not an offence in Austria. FWD has been valid also in Gibraltar (FWD Article 33).

5.4. IMPLEMENTATION

FWD ordered the Member States, until 31 December 2003 to take obligatory precautions to harmonize its national law regarding the articles of FWD.
(FWD Article 34). In other words 1 January 2004 has been an official date for FWD to start.

6. TURKISH EXTRADITION LAW

6.1. POLITICAL AND JUDICIAL NATURE OF TURKISH EXTRADITION LAW SYSTEM

In this chapter,The researcher is going to examine that how Turkish Extradition Law may be affected by the FWD on EAW, if Turkey gets the membership of EU. Therefore it will be useful to start with the main principles of the current Turkish Extradition Law. Moreover at each point, we are going to try to show the differences between Turkish Extradition Law and the FWD on EAW. Initially, it is inevitably true that Turkey does not have an explicit and comprehensive written code on extradition law. In Turkish law system, extradition method is regulated by a few articles of both Turkish National Constitution and Turkish Penal Code, furthermore, some many-sided or two-sided global conventions ratified by Turkey are considered as the legal basis of Turkish extradition law. The most important material about this subject is the core of the law system, in other words the constitution. The single provision regarding extradition in the constitution is the last paragraph of Article 38. It stipulates that “No citizen shall be extradited to a foreign country on account of an offence”.

Secondly Turkish Penal Code (here after TPC) has some provisions related to extradition. The Article 9 of TPC has some main principles and provisions concerning extradition. This article is short and does not weaken all the prob1ems that might arise from extradition issues. In relation to this provision, extradition of a Turkish citizen to a foreign state for a crime is not accepted by Turkey. Similarly, extradition of a foreigner to a foreign state for political or related felonies is not accepted.

Thirdly some International Conventions has regulations regarding the surrender issues. Turkey has become a party to the main international multilateral conventions. Moreover, Turkey has concluded bilateral agreements with 19 States on extradition.(See Annex 3)

There are also a number of Multilateral Conventions and Protocols accepted as part of Turkish Extradition System. These instruments are;

a)The European Convention on Extradition of Council of Europe of 12.13.1957 Turkey signed on 12.13.1957 and ratified on 01.07.1960 and the entry into force is 08.04.1960

b) Second Additional Protocol to the European Convention on Extradition 17.03.1978 Turkey signed on 07.16.1987; ratified on 07.10.1992; date of entry into force is 10.08.1992

c) European Convention on the Suppression of Terrorism of 27.01.1977. Turkey signed on 27.01.1977; ratified on 19.05.1981; date of entry into force is 20.08.198.

d) The European Convention on the International Validity of Criminal Judgments of 1/3/1977.

e) Turkey's relationships with 43 countries around the world on extradition are mostly regulated in line with the provisions of European Conventions.

Turkey is not a party to the "Additional Protocol the European Convention on Extradition of 15.10.1975". With the exception of multilateral international conventions and protocols, Turkey has two-sided agreements with 19 States: The USA, Iraq, Bosnia & Herzegovina, Islamic R. of Iran, China, Kazakhstan, Morocco, Libya, Australia, Kuwait, TR of Northern Cyprus, Syrian Arab Republic, Egypt, Tajikistan, Uzbekistan, Tunisia, Pakistan, Jordan, India.

In the event that Turkey becomes a party to the FWD on European Arrest Warrant the conventions with these states will remain valid, due to the article 31 of the FWD on EAW. Turkey has efforts to arrange new bilateral conventions on extradition with Sri Lanka, Saudi Arabia, Mongolia and Turkmenistan (Altintas 2003).

All these international conventions and protocols having been duly put into effect are considered as a law and are accepted as a part of Turkish Legislation. As a result of this

method, they do not need the ratification process. In accordance with the last paragraph of Article 90 of Turkish Constitution, “International agreements, duly put into effect, carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements, on the ground that they are unconstitutional” Some claim that this article may be called a flexible article that many comments get legal dress with support of it (Article 90 of Turkish National Constitution)

6.2. EXTRADITION PROCEDURES OF TURKISH LAW SYSTEM.

In case an alien state makes a request to Turkey for an extradition, the Court of General Criminal Jurisdiction in Turkish area in which the requested person resides (temporarily or permanently) must check the nationality of the person requested and also the nature of the offence committed prior to his/her surrender. If this capable court finds out that the requested person is a Turkish national and/or that the crime or crimes have political, military or related nature extradition, the request is hard to be fulfilled.

If the competent court proves that the requested person is a foreigner and his or her crime is of an ordinary nature different than mentioned above, the extradition request may be accepted by Council of Ministers. At this point, there are two different solutions: If the foreign State making extradition request has concluded a bilateral or multilateral agreement to which Turkey is a party, the Council of Ministers would probably act in line with this convention accordingly. However, in the event that, there is not an agreement between Turkey and the requesting state, the Turkish Council Of Ministers has a wide right of discretion about extradition which means that this right of discretion shall be used on the basis of “principle of reciprocity”

It should be noted that the Article 9 of the Turkish Penal Code does not drain all the troubles pertaining to surrender matters. Turkey is a party to a number of bilateral or multilateral agreements in the area of extradition. One can not find any conflicting provisions between the Turkish Penal Code and Conventions and Protocols which were

concluded by Turkey . However, these two kinds of legal resources about extradition overlap each other.

If there is not an official agreement between the requesting state and Turkey. This situation does not lock the extradition process with respect to received and outgoing extradition appeals. In the lack of such international convention or mechanism, "the rule of reciprocity" and "general principles of international customary law" applies.
The local justice of peace (magistrate) has the executive duty to issue a warrant of arrest for the fugitive concerned, either before or after the extradition request of a foreign state has been accepted by the Council of Ministers. Moreover the local judge dealing with extradition has the executive power to decide on the issue of arrest warrant. As it is well known that Turkey has negotiations with the EU as a candidate country. In the future when Turkey becomes a party to the FWD on European Arrest Warrant, by means of Acquis Communautaire [19] (http://en.wikipedia.org/wiki/Acquis_communautaire), extradition process will probably have a judicial nature.

6.2.1 An Outgoing Extradition Request from Turkey to a Foreign State.

An extradition request normally derives from two situations. One is initiated by the public prosecutor who has executive power to conduct the preliminary investigation about the fugitive. The other instance is that the criminal case has been brought to the court. The judge has the authority to start the extradition procedure.

As soon as the judicial authorities are informed that a fugitive has escaped from Turkey. This kind of information is generally acquired from Turkish Central Bureau of Interpol. A part from this, in the event that there is a suspicious situation. The judicial authorities ask from the Central Bureau of Interpol by means of Justice Ministry to issue an Interpol bulletin for the fugitive. After the announcement of location and capture of the

[19] The term **acquis communautaire**, or **(EU) acquis** (pronounced [aˈki]), is used in European Union law to refer to the total body of EU law accumulated this far. The term is French: *acquis* means "that which has been acquired", and *communautaire* means "of the community".

fugitive by the requested state through the same channels, the competent judicial authority(Either the prosecutor or the judge) without delay set up the necessary extradition documents along with the translation to enable the requested State to understand about the case.

At this instant, A General Directorate of the Ministry of Justice, called the General Directorate of International Law and Foreign Relations (hereafter GDILFR)conducts the eligibility check for potential extradition. This judicial entity conducts this operation by taking into account two factors. At first the internal legislation, international conventions and protocols which Turkey has ratified. Secondly the common principles of international customary law should be considered. If the eligibility test is affirmative, the documents mentioned above are transmitted to the competent authorities of the requested State via Ministry of Justice by means of diplomatic channel while sending a copy to Turkish Central Bureau of Interpol too, in order to initiate provisional arrest procedures through Interpol channel.

At some point in assessment of extradition documents by Ministry of Justice. if it is determined that some information or documents are incomplete, the Ministry asks from the competent Turkish judicial authority to cover the completion thereof as soon as possible. In the event that the extradition is granted, the Turkish Ministry of Justice orders the Turkish Central Bureau of Interpol to bring the fugitive back with the help of escorting Turkish police officials and surrender him to the competent judicial authority.

When Turkey harmonizes its extradition law in line with the FWD on European Arrest Warrant, by means of acquiring EU membership, an outgoing surrender request from Turkey to a member state will be governed by the provisions of the FWD on EAW.

6.2.2. An Incoming Extradition Request from a Foreign State to Turkey

After an extradition request has arrived in the Turkish Ministry of Justice (GDILFR) the request and the requesting documents are checked in terms of eligibility in line with the Article 9 of Turkish Penal Code and the provisions of relevant international conventions and protocols which Turkey has ratified In addition to this general principles of international customary law applies. If the eligibility test is affirmative, if the request is considered to be acceptable in theory, the Ministry forwards extradition documents to the competent public prosecutor in order to be presented to the local Criminal Court of First Instance (Court of General Criminal Jurisdiction) where the fugitive captured.

If a provisional arrest request is arrived at the Ministry of Justice, the Ministry makes eligibility test. After this assessment the Ministry of Justice passes on the request to the competent public prosecutor in the company of an instruction to apply the local justice of peace (magistrate). The public prosecutor demands from the justice of peace to issue a provisional arrest warrant for the person sought.

Following the arrest warrant issued by the justice of peace (magistrate), the local court of first instance determines that the fugitive is not a Turkish National. Furthermore the offence composing the subject of the request is not a political or military felony.

Whilst Turkish courts take decision in such extradition cases, the trial is based on contentious jurisdiction in public session and in the attendance of the fugitive, his/her defense lawyer and the public prosecutor. Turkish court does not check the merits of the case and criminal liability. The court determines only the nationality of the person and the kind of the crime. It is obvious that the person sought should concentrate his defense to these two topics. Subsequent to the court's determinations, the written application for an urgent objection may be presented against the decision of the relevant court. If the petition for objection is rejected . The objection, decision of court and other documents

relating to the request are given to the Ministry of Justice that will present a proposal for taking a final decision on extradition to the Council of Ministers.

But if the person is a Turkish national or the offence is of political or military nature, the request is rejected by the Ministry of Justice without transmitting to the Council of Ministers. The Council of Ministers has the final decision-making power to grant extradition upon the proposal of the Ministry of Justice. In other words extradition is still a political decision in Turkey. If The Council of Ministers decides to extradite the fugitive, the competent authorities of the requesting State are notified for surrender date through diplomatic channels and furthermore via Interpol.

When the FWD on European Arrest Warrant is considered as a binding instrument as to result to be achieved by Turkey due to acquiring EU membership , an incoming surrender request from a member state to Turkey will be ruled according to the new surrender system of the FWD on European Arrest Warrant.

6.3. DEFENSE RIGHTS AND APPEALS GRANTED BY TURKISH EXTRADITION LAW TO THE FUGITIVE.

In accordance with the Turkish Criminal Procedure Law article, all detainees (including foreigners) and arrested persons have the right to;

i) maintain silent,

ii) be appointed a lawyer by the Bar Association,

iii) be informed on the arrest warrant and its contents,

iv) to have a interpreter if he or she doesn't speak or understand Turkish Language,

vi) be informed of the place where he/she is to his/her relatives.

After **a**ll above-mentioned, administrative and court judgments might be appealed. Decision of Justice of Peace may be appealed to the Criminal Court of First Instance**.** Decision of Criminal Court of First Instance may be appealed to the Aggravated Felony Court. Decision of the Council of Ministers of may be appealed to the Council of State.

FWD on European Arrest Warrant article 11 has two provisions regarding rights of the fugitive. It reads that "(1) When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European Arrest Warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority. (2) A requested person who is arrested for the purpose of the execution of a European Arrest Warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State" It is explicitly true that Turkish Extradition Law has granted more rights that FWD article 11 in terms of 'remain silent and informing of the place of the requested person to his/her relatives.

7. TURKEY'S JUDICIAL COOPERATION IN CRIMINAL MATTERS.

7.1. THE ADMINISTRATIVE BODY DEALING WITH INTERNATIONAL JUDICIAL ASSISTANCE; JUSTICE MINISTRY OF TURKEY.

There is no doubt that the Turkish Ministry of Justice received a number of applications for MLA from a number of countries between the period of 01 January 2007 and 30 April 2008.Within this period, 2461 requests coming within the purview of judicial cooperation in criminal matters have been received. Whilst 383 of them have been fulfilled, the rest has been still under consideration (Developments, Facts, Statıstıcal Data, and And Progress 2008).

It should be stressed that the Turkish Ministry of Justice rarely rejects the request for MLA. If some real examples needed, 97 requests of Germany out of 462 have been fulfilled within the same period and this ratio is 21 percent. As much as France is concerned, the number of fulfilled request is 16 out of 72 (22 percent). In other words, the percentage of the fulfillment of the requests made by Germany and France is 21 percent and 22 percent respectively (Developments, Facts, Statıstıcal Data, And Progress 2008).

With the purpose of assessing Turkey's bid in terms of responding requests for MLA, it will be proper to draw a comparison of figures. Indeed, when it comes to the requests made by Turkey, 11250 requests for MLA has been asked by Turkey within the same period.(01 January 2007 and 30 April 2008) Only 3158 of the MLA requests have been fulfilled, the rest of them have been still under consideration and awaiting. Furthermore, as to individual countries, while Turkey has made 2590 requests from Germany, only 813 of them has been fulfilled and this ratio is 31 percent. The relations with the France is concerned, the number of fulfilled request is 199 out of 664 the ratio is 30 percent). Namely, the proportion of the fulfillment of the Turkey's MLA requests is 31 percent and 30 percent in Germany and France correspondingly. To sum up 15

percent of the requests made by foreign countries have been successfully fulfilled by Turkey, whereas 28 percent of the requests asked by Turkey has been met (Developments, Facts, Statıstıcal Data, And Progress 2008).

Since Turkey is a candidate country for the European Union for years. Turkey is having negotiations with the EU. There is no doubt that Judicial Cooperation in criminal matters falls under Chapter 24 of 35 accession negotiation chapters**.** In addition to Judicial Cooperation, Migration, Asylum, Visa policy, External borders and Schengen, Police co-operation and fight against organized crime, Fight against terrorism, Fight against drugs, Customs co-operation, Counterfeiting of the Euro are debated under the scale in the same chapter.

To the degree that the matters relating to the remit of the Ministry of Justice are the following:

i)Judicial co-operation in civil matters

ii) Judicial co-operation in criminal matters

At this instance, it must be stressed that the Justice Ministry of Turkey grants significant involvement in the requests of the other related Ministries and institutions, concerning 'Fight against terrorism, Fight against organized crime including trafficking in human beings, Fight against drugs, Fight against corruption and counterfeiting, Migration and asylum'

Turkey' judicial cooperation in criminal matters will gain a motivation in the event that Turkey becomes a party to the FWD on European Arrest Warrant. Since the extradition requests takes months sometimes years to be executed due to the political reasons, this new surrender system created by the FWD on European Arrest Warrant is going to lead a fast and sustainable and an effective judicial service.

7.2. PROGRESS REPORTS OF TURKEY DELIVERED BY THE EU COMMISSION.

7.2.1. 2006 Progress Report of Turkey Prepared by the Commission of European Communities

This report was prepared by the Commission of the European Communities regarding Turkey's judicial cooperation. There were some critics about judicial cooperation of Turkey with EU member states. The EU Commission prepared and published Turkey's progress report towards accession in November 2006. In this report some issues, inter alia , about the judicial cooperation in civil and criminal matters showed up critically.

According to the 2006 progress report; "Limited progress has been made in the field of judicial cooperation in criminal and civil matters. Moreover, the legal system does not allow for direct involvement between judicial authorities, direct execution of foreign decisions, abolishment of dual criminality and restricting the scope of refusal grounds. Legislation regarding judicial cooperation in criminal matters is not in line with EU standards, in particular , extradition of both Turkish and foreign citizens, the application of the ne bis in idem principle, environmental crime, provisions on victims' rights in the framework of criminal proceedings and the implementation of the European Arrest Warrant." And the report carries on ; "Turkey is a member of the European Convention on Mutual Assistance in Criminal Matters (1959) and its Protocol (1978). However, it has not signed the second additional protocol to the Convention (2001). Ratification of the Additional Protocol would bring Turkey closer to alignment with the "Acquis communautaire"regarding provisions on joint investigation teams. Turkey is preparing for its participation in Eurojust. Legislative alignment both in civil and criminal judicial cooperation remains limited, in particular the lack of specific legislation dealing with MLA. Overall, some progress can be reported, particularly in the areas of asylum, border management, and fight against trafficking in human beings, customs and police cooperation. Alignment with the "Acquis Communautaire" in this chapter is underway but considerable and sustained efforts are required in areas such as migration, the fight

against organized crime, money laundering and judicial cooperation in civil and criminal matter. Turkey closer to alignment with the "Acquis communautaire" regarding provisions on joint investigation teams, Turkey is preparing for its participation in Eurojust. Legislative alignment both in civil and criminal judicial cooperation remains limited, in particular the lack of specific legislation dealing with MLA"(http://ec.europa.eu/enlargement/pdf/keydocuments/2006/Nov/tr_sec_1390_en_pdf).

Turkey's being a party to the FWD in the future will allow for direct involvement between judicial authorities of EU member states, direct execution of EU judicial decisions, abolishment of dual criminality and restricting the scope of refusal grounds.

7.2.2. 2007 Progress Report of Turkey Prepared by the Commission of European Communities

The EU Commission prepared and published Turkey's progress report towards accession in November 2007.There is some critics about judicial cooperation of Turkey**.** The report reads that **"**As regards judicial cooperation in criminal matters, no progress can be reported. Direct involvement between judicial authorities, direct execution of foreign decisions, abolishment of dual criminality and restricting the scope of refusal grounds are not allowed in the Turkish legal system. Judicial cooperation in criminal matters is carried out to a large extent through bilateral agreements and legislation is not in line with EU standards. Turkey cooperates with Eurojust since 2001 but no cooperation agreement has been signed. There is no specific legislation on MLA" (http://ec.europa.eu/enlargement/pdf/keydocuments/2007/nov/turkey_progress_reports_ en_pdf).

As a critic and a contribution; Turkish Ministry of Justice has made some remarks about the situations mentioned above, it should be noted that Ministry of Justice is aware and Turkey has the ability to accommodate the obligations stemming from judicial cooperation law of the EU. However, it must be considered unfair to expect for a candidate country to allow for direct involvement between judicial authorities and direct

execution of foreign decisions. It is obviously accurate that jurisdiction rules, inter alia concerning the private international law written in the EC law are applicable only to EU Member States. Moreover all EU member states have their own international private law code.

There is no doubt that when Turkey is granted full membership of the EU, all regulations such as Council regulation on jurisdiction and recognition and enforcement of judgments. So Marital matters and in matters of parental responsibility for children of both spouses will be directly applicable without need for being incorporated in to the domestic law, in accordance with the European Community Law in other words the principle of supremacy of international agreements applies.

Within the Turkish legal system, the execution of judgments delivered by the judge of foreign countries is executed within the framework that in criminal law area "European Convention on the international Validity of Criminal Judgments' dated 1974 which Turkey has been party to since 28.01.1979 and the principle of reciprocity.

It is inevitably true that Turkey is a party to "1959 the European Convention on Mutual Assistance in Criminal Matters". Therefore Turkey has not refused the requests for judicial assistance with the exception of the grounds for refusal that are permitted by the Convention. In accordance with the reluctance of Turkey to the Convention, the principle of "dual Criminality". Double criminality is considered in the mentality that an offence which is the subject of the judicial assistance must be defined as a crime both in requesting state and requested state. Double criminality is a prerequisite incase the requests for judicial assistance contains search and seizure. Aside from these matters, the requests for judicial assistance are conducted without checking whether the crime has double criminality in both states.

In terms of 'The European Convention On Extradition" the condition of "double criminality" in the carrying out of extradition requests is just required regarding the countries that are party to the convention.

Moreover, Turkey is not the sole state which considers the double criminality requirement as a prerequisite. Even in the cases that the mentioned principle is required. The principle of "dual criminality is interpreted by Turkey in a way that the offences should be alike not in a way that the types of offences must be word for word in both judicial systems. In addition, Turkey strictly follows the principle of "either try or extradite" and this is an important principle of international customary law.

The issue of the direct involvement between judicial authorities is another issue criticized in the progress reports. In case of emergency, Foreign Judicial Authorities have always the opportunity to send a request for judicial assistance directly to the Turkish executive judicial Authority on condition that this request is sent out to the Ministry of Justice via facsimile or official e-mail.

In other (non urgent) cases, the requests for judicial assistance are conveyed to the ministry of justice that has been chosen as a central authority. There is also a valid practice for the requests of judicial assistance sent to other European Countries from Turkey. Actually the demands from Turkish Judicial Authorities sent directly to the judicial entities of European Countries without using foreign central authorities are also rejected since the document has been sent without using central authorities as intermediary. Furthermore the lack of consent remark of the central authority in the documents sent via fax is considered a refusal reason.

Another argument claims that the legislation about judicial cooperation in criminal matters and the application of "ne bis in idem" principle do not meet EU standards. Ministry of Justice defends itself feeling that such situation is hardly to be accepted as fair. Regarding this concerning rule, any requests for judicial assistance has never been refused by Turkey except some special cases. The decisive proof clearing this allegation is that the information and the documents demanded by foreign authorities especially in

the offences of drug trafficking are spread to the foreign authorities regardless of existing prosecution in Turkey as well.

There is another critical issue under debate is that Turkey's not signing "The second additional protocol (2001) to the European Convention on Mutual assistance in Criminal Matters (1959)" This protocol has been ratified by neither Germany, UK, France, nor Italy and the Netherlands. Turkey has a significant relationship with these Member States on judicial cooperation matters. For that reason it would be more fair that the signature of "The second additional protocol (2001) by Turkey after it is ratified by the member states with whom turkey has judicial cooperation lines (Comparison of Turkey's progress 2006).

Another important aspect of the judicial cooperation in criminal matters is the legal basis, at present, according to the Turkish law; the main sources of international cooperation in criminal matters are the following:

a)Multilateral Conventions concluded under the auspices of Council of Europe and United Nations,

b) Two-sided agreements concluded by Turkey with third party countries. Currently, Turkey has concluded MLA and extradition agreements with 21 countries. (See Table 3)

c) In the event that there is a lack of multilateral convention or bilateral agreement; international customary law and the principle of reciprocity apply to such international criminal matters. The **GDILFR** of Turkish Justice Ministry is the central executive authority for the execution of all varieties of judicial assistance requests about criminal matters.

In this context it must be kept in mind that Turkey has been cooperating with Eurojust and European Judicial Network activities to an assured degree. The Turkish Ministry of Justice appointed two contact points in 2001 to Eurojust. They are replying to the requests asked by different EU Member States and candidate countries.

Additionally, Turkey has signature in “the Council of Europe Convention on the International Validity of Criminal Judgments” and in the “European Convention on the Transfer of Proceedings in criminal matters.” The “ne bis in idem” principle concerning the foreign judgments is also applicable in Turkish law under certain conditions in accordance with the provisions of the mentioned international instruments. Furthermore, Turkey shares official criminal records in line with the Convention on MLA and the customary principle of reciprocity.

There is no doubt that International Agreements has formed a large part of Turkish extradition law. Most of the legal basis of international judicial cooperation in criminal matters in Turkey is composited by the bilateral agreements between Turkey and other countries and the multilateral agreements.

It is appropriate to keep in mind this fact “if there is no bilateral agreement or multilateral convention between Turkey and the requesting country, Intermational; Customary Law and principle of reciprocity apply”.

Official circulars are also covering some uncertain parts of Turkish Extradition Law. Implementation of judicial cooperation in criminal matters is governed by the circulars issued by the DGILFR situated in the Ministry of Justice. As the new Turkish Penal Code and the Criminal Procedure Code entered into force on 1 June 2005, a circular, numbered 69 and dated 1 January 2006, has been issued. The following issues are solved in this circular:

i)Service of documents and rogatory letters including MLA on the enforcement of the decisions on seizure and confiscation,

ii)Extradition requests for search of offenders with Interpol Red Notice,

iii)Transfer of sentenced persons,

iv)Researches of addresses abroad and provision of birth and death certificates and judicial records of foreign nationals.

In order to sum up Turkish Extradition mechanism; some remarks should be made. Extradition procedure has a mixed nature, that is to say, it requires the involvement of both judicial and administrative entities. (Political phase)

i) Ministry of Justice makes an initial assessment whether the extradition documents are in conformity with the relevant international conventions or bilateral agreements.

ii) Criminal Court of Peace decides on the provisional arrest of the concerned person for extradition purposes.

iii) Heavy penal court of the place where the person allegedly remain decides on the extradition request in accordance with Article 18 of the TPC and the provisions of the relevant international conventions,

iv) Court of Cassation decides on the appeals made to the decision of the heavy penal court,

vi) The Council of Ministers decides on the execution of decision of the court,

vii) Council of State examines the challenges lodged against the decision of the Council of Ministers.

7.2.3. 2008 Progress Report of Turkey Prepared by the Commission of European Communities

A new comment was released by 2008 Turkey progress report. The report states that "No progress can be reported on judicial cooperation in criminal matters. Cooperation is ensured by means of international and bilateral agreements and, in the absence there, on the basis of reciprocity and international customary law. Key pending issues are related to effective implementation of relevant Council of Europe conventions, especially on MLA and on extradition. Turkey has not signed key international conventions, such as the Second Additional Protocol to the Council of Europe Convention on MLA or the Convention on cybercrime. Turkey needs to take the necessary steps to sign a cooperation agreement with Eurojust." (http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/turkey_progress_report_en.pdf).

8. TURKISH EXTRADITION LAW VERSUS FRAMEWORK DECISION ON EUROPEAN ARREST WARRANT.

It would be more appropriate to remind about the probable controversy between the European Arrest Warrant's surrender system and relevant Turkish Legislation in the beginning of EU of Turkey by means of acquiring membership.

The Turkish Constitution (Article 38/last paragraph): Article 38/last paragraph of the Constitution stipulates that "Citizens shall not be extradited to a foreign country on account of an offence, except under obligations resulting from being party to the International Criminal Court." Some say that this constitutional provision might be a hindrance during acquiring Acquis Communautaire. Other legal instruments concerning extradition which Turkey has ratified are the following:

i) European Convention on Extradition (Paris, 13.12.1957).

ii) Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17.3.1978).

iii) Bilateral agreements on extradition

iv)Turkish Criminal Code (Law no: 5237) (Article 18):Article 18 of Turkish Penal Code as mentioned above includes the provisions of the offences which shall not be subject of extradition, on demand of the competent court, in cases of provisional arrest, the rule of specialty.

vii)Code on Criminal Procedure (Law no: 5271)

viii)Circular No: 69 issued by the Directorate General for International Law and Foreign Relations on the points that shall be taken into account by the judicial authorities on international cooperation in criminal matters.

ix)the European Convention on The International Validity Of Criminal Judgments since 1/3/1977 (Altintas 2007).

8.1. INTERNATIONAL VALIDITY OF JUDICIAL DECISIONS ABOUT CRIMINAL MATTERS IN LEGAL CONCEPT OF TURKISH EXTRADITION LAW.

There is no doubt that extradition of fugitives is the oldest type of Judicial Cooperation between States. 'The European Convention on Extradition' was signed by 14 States 13 December 1957 and came into force in 1960. Some progress has been achieved in the field of Extradition Law. First of all, extradition was accepted as an institution in Criminal Procedure Law. Dusseldorf State Court has considered that extradition is a process of International Criminal Law; therefore, there is no need to appoint a lawyer to the fugitive. On the other hand The German Constitutional Court has a different opinion about the same issue. The constitutional Court has rendered an opinion that Extradition Process is a part of Criminal Procedure Law. So a lawyer has to be appointed for the fugitive. This decision has eliminated the common opinion that Extradition is an issue considered between states. In today's world the fugitive is not an object of the surrender procedure .He/She has become the subject of the process.

Earlier, this process had two actors;the requesting state and the requested state. The third actor now is the fugitive. Except the EU member states, Germany does not extradite its own Citizens, although the requesting state has all guarantees that must exist in a rule of law state. This can be considered a type of exercising of the state sovereignty. Refusal of extradition request due to the reason of preserving public order is accepted in terms of protecting the individual. The suspect is a subject of the extradition procedure and has human rights to benefit.

Germany intended to extradite 30 terrorists to Turkey. This was a result of official negotiations between Germany and Turkey in November 1981. The Germany has asked Turkey to guarantee that these fugitives would be immune from death penalty. But since there was death penalty in the Turkish Criminal Law ,Such guarantee was not granted. For this reason the fugitives were not extradited moreover they were about to be released. But This became history ,death penalty is abolished in Turkey since 2001.

The problem of extradition of nationals may result in different consequences in terms of reasoning. Since The Anglo-American law system envisages to punish the crimes that occurred in its territory, extradition of nationals is accepted. However in the law system of Continental Europe non-extradition of nationals is commonly accepted as a rule but because of the progress mentioned above, surrender of nationals is commonly accepted. For example Austria surrenders of its nationals only for the purpose of criminal trial in the framework of Judicial Cooperation. In the International Judicial Cooperation Act of Switzerland the extradition of a national was at the disposal of his/her own written consent. This consent may be withdrawn by the fugitive until the surrender decision is made.

Extradition is regulated either international norms or internal law instruments. Switzerland, Austria and Germany have chosen the internal ones. None of these three states has made a new application. But all of them are sufficient for Judicial Cooperation. In the area of international fight against crimes, these states have created new instruments in line with their own constitutions. In addition to extradition, new institutions of international criminal law were created. The preventive function of Criminal Law was granted a value by means of integrating it to the community more effectively (Yenisey 1988 ,pp.58-62).

8.2. ENFORCEMENT OF CRIMINAL JUDGMENTS OF EUROPEAN STATES IN TURKEY.

In 1984 Turkish Parliament passed a law number 3002 regarding Execution of foreign judicial decisions concerning a Turkish national and execution of Turkish Courts' judicial decisions related a foreigner in Turkey. In this law with respect to each state's national sovereignty and judicial power , moreover, both states' agreement on the execution of the judgment plus the consent of the offender are sought in order to transfer the execution of the judicial decision. According to article 3 of the mentioned

law; There are some necessary requirements to execute a punishment decision rendered by foreign courts concerning a Turkish national. These conditions are double criminality, at least one year punishment, the time limits following the expiration of the prosecution and ‘ne bis in idem’ principle (There shall be no second prosecution against an individual if there is a final judgment against the person for the same crime.), a non political or military crime and the requirement of compliance with the Turkish Judicial System (Yenisey 1988, pp. 77-78).

9. AN EXAMINATION OF "EUROPEAN CONVENTION ON THE INTERNATIONAL VALIDITY OF CRIMINAL JUDGMENTS"

Turkey is a party to the European Convention on The International Validity Of Criminal Judgments **(hereafter ECIVCJ)** since 1/3/1977. (see Table 2) In this convention "European criminal judgment is described as any final decision delivered by a criminal Court of a Contracting State as a result of criminal proceedings.

The member States of the Council of Europe have considered that the fight against crime is becoming increasingly an international problem. For this reason the signatory states have called for the use of modern and effective methods on an international scale and created "European Convention on The International Validity Of Criminal Judgments".

It is worth to mention that this convention may be examined in three stages. First stage is "General conditions for 'Enforcement of European criminal judgments'. Second 'Grounds for Acceptance of Requests for the enforcement European criminal judgments' and third Grounds for mandatory refusal of European criminal judgments'(Yenisey 1988, pp. 79-80).

9.1 GENERAL CONDITIONS FOR 'ENFORCEMENT OF EUROPEAN CRIMINAL JUDGMENTS

Article 1 a of the **ECIVCJ** declares that "European criminal judgment" must be a final decision rendered by a criminal court of a Contracting State of the ECIVCJ as a result of criminal a proceeding. According to the article 2 of the ECIVCJ a criminal Judgment delivered by a contracting state can be enforce in another contracting state such as sanctions involving deprivation of liberty; fines or confiscation; disqualifications. In order to initiate the enforcement procedures a request shall be made by the asking state.(Article 3/2 ECIVCJ) (Yenisey 1988, pp. 81-82).

9.2 GROUNDS FOR ACCEPTANCE OF THE ENFORCEMENT OF THE EUROPEAN CRIMINAL JUDGMENT REQUESTS.

The grounds mentioned in the subtitle can be examined in terms of Articles 4,5 and 7 of the ECIVCJ. This type of requirement is indispensable for the Sentencing State to request another Contracting State to enforce the sanction. Especially Article 5 projects five points at least one of which is essential for an enforcement of a sanction subject of the procedure. Here are the five points respectively;

i) if the person sentenced is an ordinarily resident in the other State;

ii) If the enforcement of the sanction in the other State is likely to improve the prospects for the social rehabilitation of the person sentenced;

iii) If, there is a sanction involving deprivation of liberty, the sanction could be enforced following the enforcement of another sanction involving deprivation of liberty which the person sentenced is undergoing or is to undergo in the other State;

iv) If the other State is the State of origin of the person sentenced and has declared itself willing to accept responsibility for the enforcement of that sanction;

v) If it considers that it cannot itself enforce the sanction, even by having recourse to extradition, and that the other State can." (www. conventions.coe.int/**Treaty**/en/Treaties/Word/070.doc).

9.3 GROUNDS FOR REFUSAL OF A REQUEST FOR THE ENFORCEMENT EUROPEAN CRIMINAL JUDGMENTS.

Refusal of a European Criminal Judgment Request is dependant upon its being opponent against the public order of the enforcing state; namely, the basic principles of rule of law of the requested state. Moreover if there is a suspicion that whether the conviction is a political, military or financial crime; or the punishment was hardened due to ethnic, religious or nationality origin of the criminal; the request for the enforcement of a European Criminal Judgment can be overturned. If the enforcement request is contrary to the requested state's international Commitment; there is a 'ne bis in idem" situation may also be a reason for refusal of the request of enforcement a European Criminal Judgment.

In addition to this, the age of the sentenced person, time expiration of the crime' prosecution may cause the refusal mentioned above. The said rejections in this part has a dominant structure, in other words, the requested state can almost refuse the enforcement demand (Yenisey 1988, pp. 102-103).

The other grounds for **optional** refusal of an enforcement request;

i)if the transfer of the judgment hurts or jeopardizes the public safety , public policy, basic principles of criminal trial of either sentencing or enforcing state;

ii)if the executive bodies of enforcing state decide to abandon to investigate the similar acts like in the enforcement request,

iii)if there is a trial for the same acts (mentioned in the request) in the enforcing state.

iv)if the sentenced person does not pay any fine or trial expenses in the requesting state (www. conventions.coe.int/**Treaty**/en/Treaties/Word/070.doc) [20].

9.4 PROCEDURES OF TRANSNATIONAL CRIMINAL LAW.

There has been a mount of progress in the area of transnational Criminal Law. Turkey has benefitted from this enhancement. Turkey is a party to the European Convention Transfer of Proceedings (ratified on 27 December 1977).

Moreover Turkey ratified the European Convention on transfer of prisoners on 13 June 1987 (Yenisey 2008, p.68).

[20] **Appendix I** of the European Convention on the International Validity of Criminal Judgments.

10. CONCLUSION

The Framework decision on the European Arrest Warrant has introduced "Fast Surrender Service to all member states of the EU.(1 January 2004) This is a significant improvement in comparison with the consuming the member states used to have.(Classic Extradition tools)

Removal of Nationality exception is another new application and has been a shocking implication for some member states. Those Member States has solved their constitutional problems. In order to avoid to damage human rights of the fugitive FWD has made an important step forward by introducing "Grounds for mandatory refusal" FWD has made sure that upholding the principles of ECHR would become a mutual responsibility for judicial bodies of Member States.

Certainly there are negative aspects. The most famous one is Article 2(2) 32 types of offences that do not need the verification of double criminality in both issuing and executing states.

Some claim that FWD was inspired from the common market innovation. First, it may be wrong to take the common market as an example for extradition. Those two issues are basically different and far from each other. Common market seeks the sharing of well-being; the criminal law issue is meeting out suffering. Free movement of goods and services does not go against the rights of human beings but extradition infringes on requested persons' civil liberties may hurt human rights of the fugitive. Second, in international customary law, mutual recognition of criminal judgments does not require abolishment of the dual criminality requirement. In contrast, mutual recognition of criminal decisions assumes dual criminality.

The European Council has recognized this idea ten years ago. According to Tampere Conclusions of 1999, mutual recognition of judicial decisions and judgments, and the necessary approximation of legislation, go hand in hand.

The same has been laid down in the Pending Treaty establishing a Constitution for Europe. Accordingly, in the context of extradition, the non-verification of dual criminality, for 32 generic crimes are considered a mistake by some euroskeptics (Keijzer 2006).

In the ratification process of the Framework Decision on EAW . Some EU member states such as Germany, Poland, and Italy had constitutional problems conflicting with the articles of FWD relating the surrender of nationals. It is inevitably true that Turkey will probably meet the similar hindrances. Since It has specific article that does not allow its national's surrender to a foreign state. In other words the last paragraph of Article 38 stipulating that "No citizen shall be extradited to a foreign country on account of an offence".

On the other hand, in accordance with the last paragraph of Article 90 of Turkish Constitution, "International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements, on the ground that they are unconstitutional". Some scholars claim that this article may be called a flexible article that many comments get legal dress with support of it.

At this point ;The decision of the German Constitutional Court of 18 July 2005 declaring the German law implementing the EU Framework Decision on the European Arrest Warrant unconstitutional. It is necessary to examine the background of the case: The German EAW law

The national measure at risk, the German European Arrest Warrant Law was acted out in July 2004 and it implements the Framework Decision on the European Arrest Warrant. This framework decision was the conclusion of a process, started at Tampere in 1999, and was slowly unfolding when the events of September 11 2001 rapidly catapulted it to completion.

The Framework Decision on European Arrest Warrant is an instrument approved under the third pillar of the European Union and, as such, it has the skin of a measure of

Public International Law, as opposed to those measures adopted under the Community, in other words first, pillar. Framework decisions do not have direct effect: they must await implementation. Such implementation into the German legal system took place in the German EAW law which was challenged the Framework Decision. It is necessary to recall about t*he facts of the case.* The fugitive, Mamoun Darkazanli, had both Syrian and German passports and made application against a Hamburg court decision which based on a European Arrest Warrant to extradite him to Spain. In the requesting state he would have to meet terrorism allegations. He claimed that there were grave constitutional objections not only to the legality of the implementing law but also to the legitimacy of the Framework Decision itself and, more generally, to the excessive transfer of sovereignty to the EU within the third pillar-police and judicial cooperation in criminal matters.

The decision of the German Federal Constitutional Court (BVerfG) of 18 July 2005 declared the German EAW law null and void because it runs contradict to Articles 16.11 (1) and 19.IV of the Basic Law or *Grundgesetz* (GG). On the one hand, the Federal Constitutional Court refused to be drawn into a serious re-evaluation of the *Maastricht* judgment and/or revitalize the inactive conflict of the *Solange* days, rejecting strongly the claims which were not directly aimed against national law.

On the other hand, it also refused to be drawn towards the completely opposite end of the spectrum, where the government claimed that, given that the measure at stake was an instrument of implementation of EU law, the Federal Constitutional Court was not competent to review its validity against national standards. Although the Court rejected rather apocalyptic allegations founded on the non-democratic character of the third pillar and the usurpation of sovereignty carried out by the Union, it certainly made it clear that it considered the third pillar a distinct and separated area from that of the first pillar, the EC itself.

Article 16.11 of the German Basic Law is regulating ‘ Freedom from extradition’ Article 16.11 of the Basic Law contains a ban on extradition of German citizens which, in accordance with the Court, is planned to keep legal certainty and the confidence of

German citizens in their own legal system. This Article also contains the possibility of an exception to this ban when the extradition is to a Member State of the EU or to an international court, as long as compliance with the general principles of law is made safe.

The Court asserted that the fact that the rule of law is guaranteed in the Member State which issues an EAW is not sufficient to satisfy this *provision:* the special interest of German citizens demands a higher standard of protection. According to the Court, any exception to the freedom from extradition had to abide by the principle of proportionality. Thus it set out to apprise whether the EAW law infringe upon this fundamental right in a balanced way, There are three types of cases to realize this issue:

First, the cases where a German citizen is accused of crimes conducted partly or entirely in German territory. In this circumstance, the framework decision let the national judicial authorities to refuse the execution of the EAW. The legislator had not implemented this provision. For that reason the EAW law of Germany did not propose this possibility and was, therefore, unbalanced in letting surrender in this kind of condition. The relieving provision of the FWD that a German citizen could go back to Germany to serve his sentence was not considered enough to satisfy the constitutional requirements of Germany.

Secondly, cases where the crime's effects are developed in a foreign country, but the place of conduction is within German territory. In this instance it will be essential to make a concrete consideration of the circumstances of each case; in order to find out if extradition is proportionate or not. The Federal Constitutional Court believed that the EAW law did not allow for such balancing in this respect.

Last but not least, in the extradition cases where there is a sufficiently significant link to a member state, or where the act has a transnational character. The Court did not have any legal concerns related to extradition of German citizens in this type of situation.

The Court made a conclusion that the German legislator had not in all cases complied with the essential basics for this restriction to be lawful. The German EAW law failed to

reach the appropriate standard. It did not take the advantage of some of the possibilities offered by the framework decision. Hence The Concerning law has not considered protecting interest of German citizens. The legislators had encroached upon the freedom from extradition in an unbalanced and unjustifiable style (Parga 2006).

Poland case has different nature from the German Case. Polish Constitution does not allow for the extradition of Polish Nationals Constitutional court found FWD on EAW incompatible with the Constitution. Article 190(3) of the Polish Constitution allows the Constitutional Tribunal to delay the date on which a normative act starts to be binding. The Constitutional Tribunal decided to take advantage of that delaying possibility in relation to the provisions on the FWD on EAW, keeping the binding force of the FWD on EAW for 18 months. This time limit is the maximum period let by the Constitution. By this action the Polish legislators are obligated to rectify the situation to amend the surrender of nationals. The biggest possibility was to amend the relevant provisions of the Polish Constitution earlier than expiration date (Arnull 2005).

The German and Polish constitutional courts have consented that, as the member states of the European Union, each member state has introduced additional requirements undertaking to have a role in founding and enhancing the "freedom, security and justice area of EU". However the bodies of citizenship is neither discarded or largely devalued nor changed by citizenship of the European Union during the European Integration process . In other words the merger of the Framework Decision into national law shall be unswerving with fundamental rights. The mentioned EAW regulations that adopting the FWD to the national law, according to both German and Polish Constitutional courts, failed to meet these constitutional necessities.
Hence, the Federal German Constitutional Court (BVerfG*)* ruled, on condition that the legislature would not adopt a new Act implementing Article 16 (Para. 2, sentence 2) of the German Basic Law, the extradition of a German citizen to a member state of the European Union was unacceptable.

The Polish Constitutional Court (*TK*,) alternatively, upheld the entry into force until October 2006, granting Polish Parliament extra time to revise the regulations of the

Polish Penal Procedure Code, in addition to the Constitution itself. In fact on 6 September 2006, the Polish Constitution was amended first time in its record to permit extradition of Polish citizens upon the request of EAW (*Grzegorz 2007).*

Turkey may have a constitutional challenge, like Germany and Poland, at the time of having "Acquis Communautaire" and especially the FWD on EAW at the time of acquiring European Union membership. Turkish constitutional court will probably have a lot to rule over the issue of Turkish extradition system in terms of surrender of Turkish nationals.

On the other side; it is inevitably true that The FWD on EAW will contribute to the development of the Turkish extradition law, especially in terms of changing the nature of diplomatic extradition into the judicial one by means omitting political interventions. For Turkish extradition law, this change in the future will be considered a progress.

The principle of mutual recognition of judicial decisions is said to be inspired from the single market idea. But the hindrances for mutual recognition are inspected in two categories unlike single market. One is the lack of knowledge of criminal justice systems of EU member states. Other is the reluctance displayed by member states in the event of the subject of the EAW is a national of executing state. These two hindrances may be come across by Turkey too.

The guarantees to protect the human rights of the requested person provided by the FWD on EAW can be used as a confirming safeguard in Turkish extradition law. Moreover, by means of EAW, the human rights of the fugitives will be getting protected more efficiently.

There is no doubt that the abolishment of double criminality rule is an extraordinary development in the extradition law. In the coming years Turkey's being a party to the FWD on EAW will enhance the police and judicial cooperation in criminal matters between Turkey and the EU Member States.

The FWD on EAW has introduced “Mandatory and optional non-execution grounds of EAW and for some particular cases such as” decision rendered in abstentia, custodial life consent or life-time detention order, national or resident of the executing member state”. From the perspective of Turkish extradition law, these instruments will probably be made used of, in order to overcome the long and time consuming, traditional extradition cases in Turkey.

The FWD on EAW has also regulated the surrender procedure by means of using transmission methods of EAW, such as “of known location, Schengen information system, using of European judicial network. All these instruments by which an EAW is transmitted were created for a fast and effective surrender throughout the EU.

Rights of a requested person are ensured in the FWD on EAW. Consented surrender has made the surrender procedure faster. In the event that the person does not consent to his/her surrender, he or she has the opportunity to be heard by a judicial of executing member state. And these developments are hardly to be unaware of.

Decision in the event of multiple surrender requests can be considered as a relieving article for executing member state. Time limits introduced by the FWD on EAW can be seen as a key innovation. The articles regarding Situation pending the decision, hearing the person pending decision privileges and in immunities regulations can be inspired by Turkish extradition law.

Competing international obligations notification of the surrender decision, time limits for surrender of a requested person and postponed or conditional surrender, transit issues are significant aspects of the FWD on EAW.

Furthermore the FWD on EAW has considered that the effects of the surrender operation forms a diverse part of the procedure. Deduction of the period of detention served in the executing member state, possible prosecution for other offences, namely, the rule of specialty, surrender or subsequent extradition, are detailed parts of the FWD

on EAW. These instruments will help Turkish extradition law to develop its weak and time consuming parts.

By and large; Turkey is having negotiations with the EU for some years as a candidate state. Turkey is also a neighbor country to the EU with the border of Bulgaria. Despite the fact that Turkey is a party to the European convention on extradition and the international validity of criminal judgments. Turkey needs to be party to the FWD on EAW in line with acquiring EU membership. In this case Turkey will probably change some extradition instruments of its own such as act number 3002 and relevant articles of Turkish constitution and penal code. The most challenging issue will be the surrender of a Turkish national as mentioned above

Likewise , Bozano case[21] which has already affected the extradition history of the EU and is an interesting judgment, Turkey is going to renovate its extradition law in line with FWD on EAW enhancement.

All these improvements will be available provided that Turkey becomes a party to the FWD on EAW. Furthermore this participation is dependant upon Turkey's acquiring EU membership. There is no doubt that EU needs the membership of Turkey and Turkey needs vice versa. For this reason as well as being a party to the FWD on EAW, the whole Acquis communautaire will be helpful for Turkey to be a part of European Union and a part of EU law.

[21] Mr. Lorenzo Bozano is an Italian national. The Court Of Human Rights, in its judgment of 18 December 1986, held that there had been a violation of Article 5 § 1 (art. 5-1) of the Convention in Bozano Case. Bozano 's deprivation of liberty in the night of 26-27 October 1979, while the police were forcibly conveying him by car from Limoges to the Swiss border, had been neither "lawful" nor compatible with the "right to security of person"; it "amounted in fact to a disguised form of extradition designed to circumvent the negative ruling of 15 May 1979" by the appropriate court "and not to 'detention' necessary in the ordinary course of 'action ... taken with a view to deportation'" Bozano was extradited to Italy from Switzerland on 18 June 1980 and is now on the island of Elba serving a sentence of life imprisonment passed on him in absentia by the Genoa Assize Court of Appeal on 22 May 1975
Mr. Bozano asked the Court, in his main submission, to recommend the French Government ("the Government") to approach the Italian authorities through diplomatic channels, with a view to securing either a presidential pardon or a reopening of the criminal proceedings taken against. In the end the court of human rights Holds that respondent State is to pay the applicant 100,000 FF as damages and 138,350 FF in respect of legal costs him.

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APPENDICES

APPENDIX 1- The Conventions to which Turkey is a party.

Council of Europe Conventions				
Title	**Opening of the treaty**	**Entry into force**	**Date of ratification**	**Entry into force**
European Convention on Extradition	**13/12/1957**	**18/4/1960**	**18/11/1959**	**26/11/1959**
European Convention on Mutual Assistance in Criminal Matters	**20/4/1959**	**12/6/1962**	**18/3/1968**	**16/10/1968**
European Convention on the International Validity of Criminal Judgments	**28/5/1970**	**26/7/1974**	**1/3/1977**	**1/6/1977**
European Convention on the Transfer of Proceedings in Criminal Matters	**15/5/1972**	**30/3/1978**	**1/3/1977**	**27/12/1977**
European Convention on the Suppression of Terrorism	**27/1/1977**	**4/8/1978**	**27/10/1980**	**26/3/1981**
Second Additional Protocol to the European Convention on Extradition	**17/3/1978**	**5/6/1983**	**8/5/1991**	**8/5/1991**
Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	**17/3/1978**	**12/4/1982**	**18/5/1987**	**18/8/1987**
Convention on the Transfer of Sentenced Persons	**21/3/1983**	**1/7/1985**	**26/3/1987**	**26/6/1987**
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	**8/11/1990**	**1/9/1993**	**16/6/2004**	**1/2/2005**

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APPENDIX 2- United Nations conventions in which Turkey has signature.

United Nations Conventions		
Title	**Date of ratification**	**Entry into force**
Single Convention on Narcotic Drugs, 1961. (New York, 30 March 1961) amending with Protocol amending the Single Convention on Narcotic Drugs, 1961. (Geneva, 25 March 1972)	**27/12/1966**	**27/3/1967**
Convention on psychotropic substances. (Vienna, 21 February 1971)	**27/10/1980**	**22/2/1996**
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (Vienna, 20 December 1988)	**22/11/1995**	**2/4/1996**
United Nations Convention against Transnational Organized Crime (New York, 15 November 2000)	**30/1/2003**	**25/3/2003**
International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999)	**10/1/2002**	**28/7/2002**
International Convention for the Suppression of the Terrorist Bombings (New York, 15 December 1997)	**11/1/2002**	**30/6/2002**

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APPENDIX 3: Countries which Turkey has concluded agreements on MLA and Extradition

Countries which Turkey has concluded agreements on MLA and extradition	Mutual Assistance	Extradition
ALGERIA		X
AUSTRALIA		X
BOSNIA-HERZEGOVINA	X	X
CHINA	X	
EGYPT	X	X
INDIA	X	
IRAN	X	X
IRAQ	X	X
JORDAN	X	X
KAZAKHSTAN	X	X
KUWAIT	X	X
LEBANON	X	X
LIBYA		X
MOROCCO	X	X
PAKISTAN		X
SYRIA	X	X
TAJIKISTAN	X	X
TURKISH REPUBLIC OF NORTHERN CYPRUS	X	X
TUNISIA	X	X
UNITED STATES	X	X
UZBEKISTAN	X	X

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CURRICULUM VITAE

Name,Surname :Necmettin Par

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Birth Place and Date :Gaziantep/Turkey, 1975

Foreign Language :English

Primary Education : Hurriyet Ilkogretim Okulu 1986

Secondary Education: Ankara Police College 1989

University : Police Academy (Degree), 1997

Master : Bahcesehir University

Name of the Institute: Social Sciences

Name of the programme: European Public Law and European Integration

Work Experience: Various units in Istanbul Police Department From July 1997 –June 2009