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The European Arrest Warrant in Advancing Legal Integration: A Comparative Study of Kosovo and Bosnia and Herzegovina

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Abstract: Transnational crime presents a significant challenge to the sovereignty of the European countries as well as the Western Balkans. The challenges of traditional extradition have emphasized the need for prevention mechanisms and alternative cooperation methods within Europe. The European Arrest Warrant (EAW), established through reciprocal recognition, has simplified extradition and expanded its influence beyond the EU to the Western Balkans. These countries, pursuing European integration, face increasing organized crime that directly affects Europe. This research investigates the influence and implications of the EAW on the Balkans, concentrating on the harmonization of non-EU countries with EAW principles within the normative framework. Through a comparative study of Kosovo and Bosnia and Herzegovina, the paper analyses their legal, instrumental, and political frameworks, assessing extradition implementation and policy alignment. Both countries exhibit partial legal harmonization with EU standards. The study concludes that, despite not being part of the EAW, the political structures of these states help externalize EAW norms into the Western Balkans. Using qualitative comparative legal methodology, the findings contribute to scholarship on legal harmonization, European law, transnational criminal law, and inform policymakers on regional security cooperation.

Keywords: European Arrest Warrant; Extradition; Kosovo; Bosnia and Herzegovina

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1. Introduction

Over the recent decades, with the rise of transnational illicit activities, there has been a need for a more advanced protective system that aligns with better collaboration between different countries and a more enhanced system against these common threats. The European Arrest Warrant (EAW) replaced the traditional extradition procedures within the European Union (EU). It is acknowledged that the connection between corruption and organized crime presents a significant challenge to the process of collaboration between European countries.

Shelley (2006) argues that the bridge between corruption and organized crime cannot be easily differentiated. Generally, the crime committed involves accessing information or goods involving government officials, backed up by the use or threat of force by criminal groups. From her explanation, organized crime presents a contribution to illicit activities, threats like terrorism present a significant challenge, and the rapid emergence of organized crime is that these groups intentionally discover regions with a lack of law enforcement.

Furthermore, while the European Arrest Warrant (EAW) operates exclusively within European Union (EU) member states, its implications extend beyond the Union's borders, particularly affecting also the Western Balkans region as these countries pursue European integration.

Meanwhile, the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia) are at different stages of European Union (EU) association negotiations. The 2003 European Council in Thessaloniki reaffirmed that all countries participating in the Stabilization and Association Process (SAP) were potential candidates for EU membership.

As all the countries were at different stages of negotiations, the research has shown further interest in the countries of Kosovo and Bosnia and Herzegovina. For these countries to become part of the EU, it is necessary to meet the Copenhagen political criteria. Furthermore, this indicates that the Western Balkans have to work towards meeting European standards by harmonizing their legal and judicial systems with European laws. EAW is becoming a model framework for integrating these countries into the EU. Therefore, the research thoroughly analyses the Republic of Kosovo and Bosnia and Herzegovina, two post-war countries with complex constitutional arrangements, and their adaptation of national legislation systems to the EAW framework. The research aim is to present a clear view of the current situation and the differences between these two countries. Meanwhile, the guiding question of the

research is: How have Kosovo and Bosnia and Herzegovina adapted their legal framework to align with the EAW framework? Following the efforts of these two countries to become a part of the EU.

2. Methods

The research consists of qualitative and comparative methodologies. By analyzing the instrument of EAW and comparing it with the traditional extradition system of the Republic of Kosovo and Bosnia and Herzegovina. Furthermore, the research is founded on doctrinal legal analysis, with an interest in the national laws of both non-EU countries, bilateral treaties with other countries, the Council framework of decisions and other international instruments used in cooperation regarding criminal offences. The comparative approach includes the similarities and the differences between the two countries of interest, following the EU, where the key focus is on the legal extradition process, followed by the internal procedural mechanisms and institutional mechanisms, and the alignment with the EAW, by also providing the challenges and limitations of these two non-EU countries.

3. Literature Review

Crime, being an imminent threat to European sovereignty, has driven the implementation of various strategies and policies aimed at preventing and combatting crime, as it poses an imminent threat to European sovereignty and the safety of European citizens. Starting as early as the Development of the policy field, EU criminal law gained momentum in the late 1990s when the Tampere European Council introduced mutual recognition as the “Cornerstone Principle” in cooperation in criminal justice matters. In essence, mutual recognition requires Member States to give full recognition to judicial decisions made in other jurisdictions across the EU, aiming to fast-track and simplify procedures for cross-border law enforcement and cooperation. The foundation of the EU comprises several treaties and mutual agreements between the member states. Moreover, the EU has its restrictions, and it cannot prescribe or apply criminal law protection of its assets.

Moreover, administrative or disciplinary protection does not possess bodies of prosecution and enforcement that could independently, on the territory of Member States, effectively conduct procedures and apply administrative or disciplinary measures against violators of Community Law. Starting with the establishment of

the European Union (EU), which is grounded on the Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) with the same legal value. As well as with the Treaty on the European Union that was signed in Maastricht on February 7, 1992, and entered into force on November 1, 1993.

Meanwhile, in 2002, the European Warrant Arrest (EAW) came into force in 2004 as a part of the response to the 9/11 terrorist attacks. The EAW became the first EU legal instrument for cooperation in criminal matters based on the principle of mutual recognition. The meaning behind the framework decision, according to the European Commission (EC), was the replacement of the traditional extradition, which provides a more effective system of surrendering persons requested or wanted to conduct criminal prosecution, by issuing a detention order, or by serving a custodial sentence. According to the European Commission (2020), the main features of the framework decision that distinguish it from the traditional extradition include that the EAW provides a judicial decision, which is enforceable in another Member State based on the principle of mutual recognition.

Furthermore, there is no verification of double criminality concerning 32 categories of offences listed in Article 2(2) of the Framework Decision, as defined by the issuing Member State, if those offences are punishable by a custodial sentence or a detention order for a maximum period of at least three years. Whereas the 32 categories of offences include crimes like terrorism, human trafficking, drug trafficking and other kinds of crimes within the category. There are strict time limits for deciding on the execution of an EAW and for surrendering to the requested person. In contrast, measures that are easier to comply with are based on the EAW form. The Commission's report shows that the European Arrest Warrant (EAW) was introduced as a mechanism to simplify the process of arresting criminals. Meanwhile, the EAW introduces strict time limits that distinguish it from traditional extradition procedures.

Another advantage is the phase of the executive state, which requires them to reach a final decision within 60 days of the arrest, but this has been reduced to 10 days if the person consents to surrender. Moreover, as competent authorities for executing the EAW, a large majority of Member States have designated courts (e.g., courts of appeal, district courts, and supreme courts) or judges. According to Article 2(1) of the range and conditions for issuing a EAW, the grounds for the issuing of the EAW include the acts punishable by law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order made, for sentences of at least four

months. Additionally, the framework decision provides a clear understanding of the application of the EAW. A handbook is written on the EAW, clearly explaining the entire process of executing the warrant. A successful framework in European countries for the collaboration process also means that the Western Balkans should align with this framework, as these countries are in the process of integrating into the European Union (EU).

4. Analysis

4.1. Legal Overview of the European Union (EU) and the European Warrant Arrest (EAW)

The application of legislation defines the right to maintain sovereignty and order and uphold the law within a country. As for European countries, there is a difference between the meaning of International Criminal Law and Criminal Law in general. International Criminal Law, used on a broader perspective, and criminal law in an international context, are terms that are used to describe different meanings. International Criminal Law encompasses all areas of criminal law which exhibit factually or legally any international element.

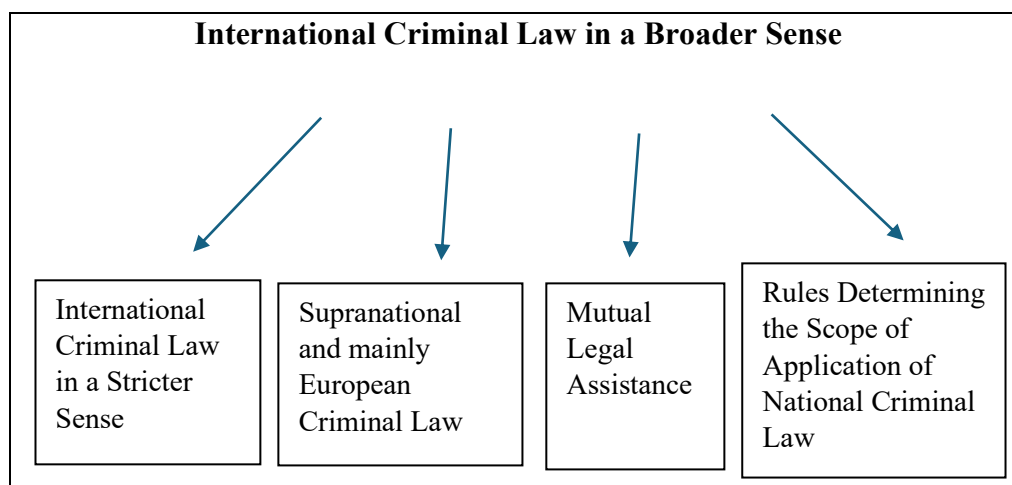


Figure 1. International Criminal Law in a Broader Sense

Source: International and European criminal law, by H. Satzger, 2012, De Gruyter.

According to Satzger (2012), the term International Criminal Law is often used in a stricter sense to describe the body of all legal norms that constitute criminal liability under public international law, followed by Supranational and mainly European

Criminal Law, meaning that a supranational legal order itself contains criminal offences directly applicable in the Member States, suggesting that it can be the only legal basis for a criminal conviction by a national court. Moreover, European Criminal Law is an instrument superior to national criminal law, which distinguishes between the core legal framework. The primary law of the core legal framework refers to the founding treaties. Therefore, the EU can only pass laws in the policy areas where the member states have authorized it to do so via the EU treaties. The body of law that comes from the principles and objectives of the treaties is known as secondary law. These include legislative and non-legislative acts.

Furthermore, mutual legal assistance encompasses all legal rules designed to facilitate transnational law enforcement. Moreover, according to Satzger (2012), the Rules Determining the Scope of Application of National Criminal Law clarify that the rules are procedural. So, whether a state has criminal jurisdiction and thus applies to a cross-border case does not necessarily mean that the statutory offence will be fulfilled. Instead, there is a need to examine every case to determine whether the case is the act in the respective provision that is meant to cover whether the particular national offence produces a legal interest that was violated. The broader sense of International Criminal Law involves the principles of the EU, which lighten the cooperation process.

Hereby, it also clarifies that the laws are adopted in the EU, starting with the European Law, which influences criminal law. Building on these principles, the EU has developed more enhanced instruments for cross-border cooperation in criminal matters within the EU, transitioning from the traditional extradition to the notable EAW. Whereas the Framework Decision entered into force in 2004, replacing the multilateral extradition system established under the European Convention on Extradition. Moreover, since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of December 13, 1957, cannot be sufficiently achieved by the Member States acting unilaterally and, therefore, because of its scale and effects, can be better achieved at the Union level. The main objective was to establish a secure area of freedom, justice, and security. Therefore, the extradition process was abolished and replaced with the EAW. The adoption of the EAW also involves undergoing sufficient control and having a judicial authority of the Member State in which the person was arrested. The person will also have to decide on their surrender. Moreover, the European Union (EU) has to respect the fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on

November 4, 1950, and as they result from the constitutional traditions common to the Member States, as general principles of Community law. Before the application of the EAW, extradition was regulated by the European Convention on Extradition. Furthermore, extradition is based on bilateral and multilateral treaties. Meanwhile, the EAW is based on EU legislation. The differences between the traditional extradition and EAW are numerous. Starting from the removal of the 32 specified offences and the strict time of surrender decisions, which proved to be a prolonged timeframe. As far as surrender between Member States is concerned, according to the Official Journal of the European Union, 2017, corresponding provisions of the following conventions have been replaced:

(a) the European Convention on Extradition of December 13, 1957 (ETS No 024), its additional protocol of October 15, 1975 (ETS No 086), its second additional protocol of March 17, 1978 (ETS No 098), and the European Convention on the Suppression of Terrorism of January 27, 1977 (ETS No 090) as far as extradition is concerned.

(b) The Agreement between the 12 Member States of the European Communities on the simplification and modernization of methods of transmitting extradition requests of May 26, 1989.

(c) 1) The Convention of March 10, 1995, on simplified extradition procedure between the Member States of the European Union.

(d) The Convention of September 27, 1996, relating to extradition between the Member States of the European Union.

(e) 2) Title III, Chapter 4 of the Convention of June 19, 1990, implementing the Schengen Agreement of June 14, 1985, on the gradual abolition of checks at common borders.

Additionally, EAW constitutes a “judicial decision,” which must be issued by a “judicial authority” within the meaning of Article 6(1) thereof. The Court of Justice ruled that the words ‘judicial authority’, contained in Article 6(1) of the Framework Decision on EAW, are not limited to designating only the judges or courts of a Member State but may extend, more broadly, to the authorities required to participate in administering justice in the legal system concerned.

4.2. Post-Conflict Legal Transformation in the Balkans

The Western Balkans, particularly Kosovo and Bosnia and Herzegovina, although two distinct countries, both face challenges as post-conflict countries in the process of transition, with ongoing bilateral disputes. According to Bieber and Tzifakis (2019), at the end of the Kosovo War in 1999, the EU decided to use its enlargement policy as the overarching framework for its efforts to consolidate peace and stability in the Western Balkans. It demonstrates the attempts of both parties to integrate the Western Balkans into the European Union, starting with the consistent commitment through the Stabilization and Association Process in 2016. The intention with SAA was to establish an area that allows for free trade and the application of European standards in other areas such as competition, state aid and intellectual property. It can assist with the implementation of reforms aimed at achieving the adoption of European standards by Kosovo, and other provisions cover political dialogue and cooperation in a wide range of sectors, including education, employment, energy, the environment, justice and home affairs.

Furthermore, the Western Balkan countries enthusiastically embraced the perspective of full integration into Euro-Atlantic structures, with the notable exceptions of Serbia and Bosnia and Herzegovina in the case of NATO association and elevated these twin goals to become their fundamental foreign policy orientation. The Republic of Kosovo faces limited international recognition and complicated bilateral extradition policies.

Meanwhile, for Bosnia and Herzegovina, even though it is a recognized EU candidate state, the difficulties lie in the internal constitutional fragmentation that shapes the cooperation. Primary sources include national legislation, EU legal instruments, and international treaties, while secondary sources comprise scholarly articles, EU reports, and policy briefs. By highlighting the similarities and divergences between these two Western Balkan countries in the cooperation system, it is possible to understand if and just how the European Arrest Warrant has shaped the Western Balkans, even though it does not apply directly to non-European countries.

The EAW for the Western Balkans is of great importance, as Kosovo and Bosnia and Herzegovina are still in the process of integration into the European Union. Whereas, according to Arsovska (2006), in explaining what the organized crimes of ethnic Albanians do where, besides trafficking of human beings, including children, for so-called “medical purposes,” the ethnic Albanian organized crime groups have also been involved in drug and arms trafficking, trafficking of human organs,

exploitation of prostitution (in many cases linked to episodes of slavery), facilitating illegal immigration, extortions and all kinds of property crime. One Italian prosecutor made clear that “Albanian organized crime has become the point of reference for all criminal activity today. Everything passes via the Albanians.”

Furthermore, for Bosnia and Herzegovina, the process of extradition is primarily regulated by the Law on Mutual Legal Assistance in criminal matters. Regarding the law on mutual legal assistance, and according to Article 3, in urgent cases where there is a need for urgent cooperation on the matter of extradition, it is possible with the help of Interpol.

4.3. The Legal Frameworks and International Cooperation in Criminal Matters of Kosovo and Bosnia and Herzegovina (BiH)

Starting with Kosovo, the legal framework for criminal matters is based on the Criminal Procedure Code of Kosovo Law 06/L-091. Following the Law on International Legal Cooperation in Criminal Matters. According to Law No. 04/L-031 on international legal cooperation in criminal matters, **International legal cooperation** may also be carried out with international organizations or institutions when necessary. In the absence of an international agreement between the Republic of Kosovo and a foreign State, international legal cooperation may be provided based on the principle of **reciprocity**. Judicial procedures for providing international legal cooperation are regulated by the provisions of the **Criminal Procedure Code** unless otherwise provided by law. **International cooperation between states in criminal matters** is carried out based on **bilateral and multilateral agreements** signed with various countries. In their absence, it is governed by the principles of **voluntarism and reciprocity**. Cooperation in criminal matters is regulated through bilateral or multilateral agreements, and these **agreements facilitate cooperation between states**. **In the matter of cooperation with other countries, what maintains a significant role is the recognition of Kosovo. For countries that do not recognize Kosovo as a country, this complicates the process because there is no mutual agreement between the countries for cooperation in criminal matters, which also leads to an extended time framework. Countries that do not recognize the Republic of Kosovo can refuse to process the requests.** Legally, the forms of international legal and criminal cooperation are:

- Extradition;
- Mutual legal assistance in criminal matters;

- Transfer of criminal prosecution to another state;
- Enforcement of a foreign court judgment.

Therefore, the process of extradition in Kosovo is regulated through diplomatic channels and requires judicial review by Kosovo's courts. The decision is not only based on the court's final decision but also requires approval from the Minister of Justice. Meanwhile, international cooperation, as mentioned above, is based on bilateral treaties with other countries, regional agreements, and Interpol, as well as the issuance of Red Notices, and is also based on the Stabilization and Association Agreement with the EU. The legal framework in criminal matters in Bosnia and Herzegovina (BiH) is based on the Law on International Legal Assistance in Criminal Matters. Following the Criminal Code of Bosnia and Herzegovina. Furthermore, the extradition process is handled by the Ministry of Justice of BiH, and the judicial authorities also decide on the legal validity. The Council of Ministers decides more complicated cases. Meanwhile, the regulation governing the extradition process is often based on the European Convention on Extradition (1957).

Taking into consideration that Bosnia and Herzegovina (BiH) was essentially given its constitution from the outside in 1995. As part of the Dayton Peace Agreement, the primary aim was to maintain peace by dividing power along ethnic lines, albeit at the expense of efficiency. The state functions to the extent that its political elites want it to, but it has been marked by blockade and increasing ethno-national egoism. The causes of the state's dysfunctionality, especially at the national level, lie primarily in the political unwillingness of the ruling elites to build a fully functioning state. The difference between the two countries is that Bosnia and Herzegovina is a member of the Council of Europe, and the Republic of Kosovo is not. Meanwhile, cooperation between BiH channels is facilitated through Interpol, treaties and regional initiatives. For BiH, mutual legal assistance, extradition and cooperation with EU countries are easier because BiH is a fully recognized sovereign state. As for the collaboration between the two non-EU states, even though BiH has not recognized the Republic of Kosovo as an independent state, there is collaboration in criminal matters. The two jurisdictions collaborate through pragmatic and technical arrangements. Law enforcement agencies utilize regional platforms such as the Southeast European Law Enforcement Centre (SELEC) and informal channels to exchange information and coordinate efforts in combating cross-border crime.

5. Conclusion

The research focused on the influence that the European Arrest Warrant (EAW) has on the Western Balkans, particularly in the countries of study, the Republic of Kosovo and Bosnia and Herzegovina (BiH). The study focused on these two countries because they are in the process of European Integration. Furthermore, both countries face challenges in their legal frameworks and judicial institutions and have to align with the EU's standards. The analysis showed that EAW has advantages over traditional extradition. Through judicial cooperation, aligned with the principle of mutual recognition and strict procedural timelines. Moreover, the legal overview of the European Arrest Warrant (EAW) demonstrates the need for the European Union (EU) to provide more efficient judicial cooperation in criminal matters within the EU. By replacing traditional extradition with a mutual recognition-based mechanism, the European Arrest Warrant (EAW) enhances the chances of efficiency and better collaboration, which also fosters trust among the Member States. The difference between EAW and traditional extradition lies in the ease of collaboration, a more efficient timeframe, and demonstrating a commitment to creating a secure and unified area of justice. Understanding the framework enhances the chances of assessing non-EU countries, as the studies provide in the comparison of the legal framework of the Republic of Kosovo and Bosnia and Herzegovina (BiH). This demonstrates that these two non-EU countries are still in the process of integrating into the EU and are aligning their national laws with the evolving standards, highlighting the indirect influence that the EAW has on the Western Balkans, even though the EAW does not directly apply to these non-EU states. Both countries have made considerable progress in harmonizing their legal frameworks. However, the political and constitutional challenges complicate complete implementation. For BiH, the challenge is the decentralized system, and for Kosovo, it is the partial international recognition from other states. Political interference, institutional weakness, and organized crime remain significant barriers to effective legal enforcement and successful collaboration in the Western Balkans. The complex structure established by the Dayton Peace Agreement has resulted in the decentralization of the legal system, which is also complicating the harmonization with EAW. Kosovo has made significant progress with judicial reforms and has adopted legislation aimed at improving its collaboration with the EU legal framework. Of course, the challenges are different for both non-EU states.

6. Recommendations

The findings provide several recommendations that would enhance the chances of the Republic of Kosovo and Bosnia and Herzegovina (BiH) aligning with the European Arrest Warrant (EAW). For both countries, it is more than necessary to continue harmonizing the national legal systems with EU systems. Furthermore, increasing regional collaboration among the Western Balkans would create the possibility for operational compatibility and better integration in the EU. Implementing mechanisms according to the EAW framework, as a model framework under existing Stabilization and Association frameworks, would help to adapt to EU legal norms. Moreover, finally, addressing the political barriers remains a challenge to create a successful harmonization of legal frameworks and collaboration in criminal matters.

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