

Rob Blekxtoon (ed.), *Handbook on the European Arrest Warrant*, TMC Asser Press, 2005, xiv + 283 pp. + Index 6pp.

The European Arrest Warrant (EAW) is now widely used to secure the arrest and surrender of persons across the European Union (EU) and, as a recent European Commission's report indicates, has largely overtaken traditional extradition procedures as between Member States. Therefore, a "handbook" on the EAW, purporting to serve "as a guide to the judiciary and other interested parties" (p. 6), is undeniably a welcome prospect, particularly when supported and updated by a website, <http://www.eurowarrant.net>, which serves as the vehicle of a collective research project launched by the Asser Institute around a pan-European consortium of public and private bodies.

Nonetheless, this is not a "handbook" in the practical sense of the term. Although the Framework Decision is reproduced at the end with annotations and with the standard form to be used by the courts involved in the procedure, the corresponding provision-by-provision comments are rather brief. The main part of the book is a collection of academic papers divided into three parts: a first one that sets out a general framework, which includes a short history of extradition as a legal system, compares the EAW with the old system and makes a short overview of the EAW procedure as well as the role to be played by the Eurojust body; a second one in which specific principles regarding the implementation of the EAW are dealt with; and a third one on the relation between the EAW and human rights instruments.

In this regard, some of the specific contributions are particularly interesting: Professor van der Wilt's chapter on *Ne Bis in Idem* is especially helpful with regard to (i) the problems arising from the differences between the civil and common law concepts of *ne bis in idem* v double jeopardy and (ii) the corresponding proposed mechanisms for dispute resolution between Member States in the event of discrepancy on the scope of this principle; and so is Professor Lagodny's consideration of the concept of surrender (as distinct from traditional extradition). But these materials appear to be more directly relevant to the academic and international lawyer than the criminal law practitioner.

Other contributions are, despite the interest of the topic, of more doubtful value due to the way they are developed. It is, for example, disappointing that Paul Garlick's chapter on the EAW and the European Convention of Human Rights (ECHR) focuses much more on English case law than on that of the European Court of Human Rights (EctHR). The same holds for other chapters, such as Krapac's and Keijzer's, in which a very narrow scope – Croatian and Dutch standpoints – seems too specific for a book that is intended to have a broader nature.

In addition, from a substantial viewpoint, Selma de Groot points out, on the basis of the mutual trust principle enshrined by the EAW, that the refusal to surrender on the basis of an ex ante review “can possibly not to be fulfilled to the same scale than before” (p. 97). Although her chapter is very well structured, this conclusion is somehow contested by recent episodes: the EAW has come under attack in a number of national courts and significant problems have arisen in some Member States where their constitutions provide protection against extradition of own nationals. As a direct consequence, the mutual trust principle has suffered and has given rise to a revival of the reciprocity principle between Member States. In this regard, in response to the German Constitutional Court’s ruling on the insufficient fundamental rights protection contained in the German implementing legislation, the Spanish authorities rejected several EAW requests from Germany because under Spanish Constitutional law extradition is permitted only on the basis of reciprocity.

Furthermore, there is some lack of consistency in Garlick’s chapter regarding its treatment of article 6 of the ECHR, since he points out as a given that the fair trial rights in article 6 “are engaged in the process of executing the EAW” (pp. 167-168) but does not clarify sufficiently that the bar is extremely high: as recognised by Keijzer in its chapter, in the Mamatkulov case (Mamatkulov v Turkey (46827/99 and 46951/99, Chamber judgment, 6 February 2003; Grand Chamber, 4 February 2005), the EctHR did accept that a country proposing to surrender a fugitive must give proper consideration to the possibility of a breach of article 6 of the ECHR only when there would be a “flagrant denial of justice”. Caroline Morgan, in her otherwise useful and wide-ranging chapter on defendants’ rights, faces the same problem. Taking into account the notion used by the EctHR together with the mutual trust principle at the basis of the EAW, it is, therefore, difficult to see the ground for Garlick’s expressed hope that in this regard UK courts “will give section 21 of the Extradition Act 2003 [judge at extradition hearing must consider ECHR compatibility] a wide interpretation” (p. 181).

Also, since the EAW was, in its last preparation stage at least, deemed to be a response to 9/11, the reader may regret that terrorism as such is not dealt with in the Handbook. It seems quite disappointing, taking into account that the Framework Decision mentions “terrorism” as one of the offences to which the EAW applies without verification of double criminality, that Nico Keijzer’s chapter dealing with this requirement only dedicates two lines on the issue. Besides, the category of murder, referred to as “clear enough” (p. 156), is far from being clear. As noted by the Commission in its recent Report, some Member States have indicated a wish to review the double criminality list because of concerns in relation to abortion, euthanasia and possession of drugs: there are circumstances where abortion and euthanasia may not be unlawful and their categorisation raises difficult questions of fundamental rights and morality. Moreover, questions relating to the legality of the double criminality in the EAW are also pending before the European Court of Justice (ECJ). In July 2005 the Belgian Court of Arbitration made a reference to the European Court of Justice in a case challenging inter alia the legality of the partial abolition of dual criminality. Although

the Advocate General has rejected the claim, it remains to be seen what does the ECJ rule on this matter.

These comments notwithstanding, the Handbook serves as a good starting point for understanding the issues which underlie the EAW. The overall structure of the book is quite coherent – which is not always the case with collections of academic papers. In this respect, it goes in certain matters beyond introduction and is of great interest even for those readers already more familiar with this field of research or expertise. Nevertheless, it needs to be read critically in some respects, as noted above. In any event, taking into account that the book is part of a general ongoing project with an on-line expression, it is to be expected that some of the shortcomings mentioned above will be dealt with more in depth in the updates posted in the website.