

European arrest warrant in Germany

Cross-border prosecution

The European Arrest Warrant Act is based on a decision taken by the European Union on February 13, 2002 which also requires member states to extradite their own nationals to other member states for criminal prosecution. German nationals convicted of crimes in other EU countries will continue to serve their prison sentences in Germany so that resocialization measures can be carried out.

The extradition of a German national for criminal prosecution can only be approved if the person in question agrees to this. If the person to be extradited has established permanent residence in another member state and intends to remain there after serving out the prison sentence imposed, then that person is to be given the option of serving the sentence in the prison system of the country of choice.

Offense committed in Germany not a basis for extradition

Article 16 of the German constitution states that no German may be extradited to a foreign country. The only exception to this rule is if a law stipulates extradition to a member state of the European Union or an international court of law. However, under the present bill a criminal offender would not be able to avoid extradition on the basis of citizenship if the crime committed were related in some important way to another country. This would be the case, for instance, if a murder were committed abroad. German nationals would also be extradited in cases involving terrorist acts or international drug trafficking.

Extradition of Germans and foreigners with equivalent status

A second important change contained in the amended bill concerns the case analysis demanded by the Constitutional Court in connection with the extradition of German nationals. The court requires that each case be carefully examined to determine whether or not extradition is commensurate.

The special extradition rules that apply to German nationals would also apply to certain foreign nationals as long as they are legal residents. This would be true, for instance, in the case of foreign nationals who live in Germany with a German family member or life partner.