



Stream

Strengthening Trust in the
European Criminal Justice Area
through Mutual Recognition
and the Streamlined Application
of the European Arrest Warrant

Research Brief

Poland

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Introduction

This STREAM Research Brief aims to provide an overview of how and the extent to which rule of law guarantees (in particular judicial independence), as well as EU fundamental rights and procedural safeguards have been taken into consideration by Polish judicial authorities who issue and execute European Arrest Warrants (EAWs).

Considering the practice of cooperation in the EAW area, it is therefore important to refer to the case law of the European Court of Human Rights (three judgments), Court of Justice of the European Union (four judgments), Constitutional Tribunal of Poland (one judgment), Supreme Court (one resolution and one judgment), courts of appeal (four decisions), and regional courts (thirty decisions) as competent to make decisions on the issuing and execution of EAW. Selected jurisprudence illustrates the problems identified in different sections of this Research Brief.

When selecting the case law that constitutes the main source material for the considerations, the possibility of its reference to the research problem was guided. As part of the analysis, judgments on effective legal protection at the stage Polish judicial authorities issue an EAW were used. Against this background it was particularly important to examine the views of the judiciary on the application of the principle of proportionality and the principle of specialty in the EAW procedure.

In the context of execution of the EAW, it was justified, in particular, to show the practice related to the need to ensure the protection of fundamental rights. The selected case law allows the conclusion that cooperation in the field of the EAW from the Polish perspective is based on a strong emphasis on the importance of the principle of mutual trust and the principle of mutual recognition of judgments. At the same time, the research material allows the conclusion that the issuance of negative decisions regarding the execution of the EAW due to a risk of violating fundamental rights is reflected in few cases, constituting only an exception to mutual recognition.

The analysis of jurisprudence also enabled the realities of cooperation under the EAW procedure in connection with the exchange of information between EU Member States to be shown.

Section I – Fundamental rights: primarily a matter for the issuing State?

To assess the effectiveness of judicial protection in Poland at the issuing phase it is important to perform a synthetic analysis in two areas. Firstly, it should be noted to what extent the Polish Code of Criminal Procedure² (CCP) and national case law regulating the procedure for issuing an EAW allows for the conclusion that there are appropriate standards to guarantee the protection of the rights of the person whose surrender is requested by the Polish court under the EAW. Secondly, account must be taken of the state of affairs arising from the so-called reforms of the justice system carried out in Poland from 2015 to 2019 and the fact that Poland is currently perceived as a State that does not guarantee respect for the rule of law, in particular in the context of systemic doubts as to the independence of the judiciary.

It seems justified to state at the outset that, in particular, the analysis of the provisions of the CCP regulating the EAW, as well as the study of the case law of Polish courts with regard to the EAW, allows one to conclude that the general assumption about the identified irregularities does not necessarily result in weakening cooperation in the field of EAW. It needs especially to be emphasised that Polish criminal procedural law does essentially create guarantees for effective judicial protection in the issuing phase.

Firstly, according to Article 607a of the CCP, a local regional court, either: (i) on a motion of the public prosecutor; or (ii) *ex officio*; or (iii) on a motion of a competent district court in court and enforcement proceedings, may issue an EAW. With regard to an EAW issued for prosecution purposes, both the decision on pre-trial detention and the subsequent decision on issuing an EAW are taken by the court. In turn, in the enforcement proceedings, the basis for issuing an EAW is a final court judgment in which the enforceable penalty of deprivation of liberty was imposed. This means that the use of the EAW procedure is based on the rulings of the court, both in the case of a decision conditioning the EAW and the decision on issuing the EAW itself. Hence, there is no doubt that decisions that are important from the perspective of issuing an EAW are taken only by the judicial authority within the meaning of Article 6(1) of the European Arrest Warrant Framework Decision 2002/584/JHA (EAW FD).³

Secondly, Article 607b of the CCP includes a principle of proportionality that significantly limits the issuing of an EAW if: (i) the 'interest of justice' does not require it; (ii) for criminal proceedings conducted against the person prosecuted for an offence punishable by up to one year's imprisonment; and (iii) the carrying out of a custodial sentence of up to four months or any other measure involving deprivation of liberty for a period not exceeding four months. An example of disproportionality is where there is only a short sentence (and also a mild penalty). This applies also

2 The Act of 6 June 1997; consolidated text: OJ of 2022, item 1375.

3 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, *OJ L 190, 18.7.2002, p. 1.*

to the cases in which the EAW can be issued – because it concerns executing a penalty of imprisonment of up to four months or any other measure involving the deprivation of liberty not exceeding four months – but the Polish courts find that its application is not appropriate.⁴

An EAW also cannot be issued where a given crime is not subject to the penalty of deprivation of liberty.⁵ The same applies to the penalty of deprivation of liberty with a conditional suspension of its execution, except when the execution of this penalty has been ordered. Analysis of the Polish case law shows that there is no interest of justice in issuing an EAW also in the case of the prosecution of a convicted person for offences for which a penalty of fine or a penalty of restriction of liberty was imposed, and then, due to the failure to carry out the sentence, an alternative penalty of imprisonment was ordered.⁶

Polish courts often emphasize that the EAW is a legal instrument generating significant financial and organisational expenses related to the need to involve the authorities of other Member States, as well as the need to organise international convoys.⁷ In refusal decisions based on a finding of disproportionality, attention is also drawn to the premature issuance of the EAW if only a short period of time has been spent searching for a given person in Poland, or where there is a lack of exhaustion of all legal possibilities aimed at voluntary performance of a given activity⁸ (e.g. service of summons to serve a penalty of deprivation of liberty to a specified address of the convict in another EU Member State). The courts also found issuance of EAWs to be disproportionate: when the sentence to be served had been issued against the requested person in absentia;⁹ due to the fact that the suspect was accused of committing an act causing little social harm;¹⁰ the requested person committed minor fraud offences and the value of the

4 Decision of the Regional Court Warsaw-Praga in Warsaw of 21 January 2020, case no. V Kop 84/19, not published; decision of the Regional Court Warsaw-Praga in Warsaw of 9 November 2020, case no. V Kop 72/20, not published; decision of the Regional Court in Gdańsk of 17 December 2020, case no. XIV Kop 108/20, not published.ca

5 Judgment of the Supreme Court of 24 June 2008, case no. III KK 49/08, Legalis no. 121796.

6 Decision of the Regional Court in Konin of 29 June 2020, case no. II Kop 18/20, not published; Decision of the Regional Court in Słupsk of 2 November 2020, case no. II Kop 24/20, not published.

7 Decision of the Regional Court in Konin of 5 March 2020, case no. II Kop 5/20, not published; Decision of the Regional Court in Konin of 22 June 2020, case no. II Kop 14/20, not published; Decision of the Regional Court in Konin of 2 July 2020, case no. II Kop 15/20, not published; Decision of the Regional Court in Konin of 6 July 2020, case no. II Kop 16/20, not published; Decision of the Regional Court in Konin of 28 September 2020, case no. II Kop 21/20, not published.

8 Decision of the Regional Court in Gdańsk of 26 March 2020, case no. XIV Kop 55/20, not published; decision of the Regional Court in Konin of 1 April 2020, case no. II Kop 9/20, not published; decision of the Regional Court in Gdańsk of 29 June 2020, case no. XIV Kop 72/20, not published; decision of the Regional Court in Gdańsk of 13 July 2020, case no. XIV Kop 74/20, not published; decision of the Regional Court in Gdańsk of 29 July 2020, case no. XIV Kop 71/20, not published; decision of the Regional Court in Gdańsk of 2 September 2020, case no. XIV Kop 91/20, not published; decision of the Regional Court in Gdańsk of 21 September 2020, case no. XIV Kop 97/20, not published; decision of the Regional Court in Konin of 18 December 2020, case no. II Kop 29/20, not published.

9 Decision of the Regional Court in Gdańsk of 18 June 2020, case no. IV Kop 68/20, not published; decision of the Regional Court in Gdańsk of 10 November 2020, case no. IV Kop 112/20, not published; decision of the Regional Court in Gdańsk of 25 November 2020, case no. IV Kop 70/20, not published.

10 Decision of the Regional Court in Gdańsk of 8 January 2020, case no. 139/19, not published; decision of the Regional Court in Gdańsk of 16 July 2020, case no. XIV Kop 81/20, not published; decision of the Regional Court in Gdańsk of 15 October 2020, case no. XIV Kop 100/20, not published.

damage caused by them was insignificant.¹¹ As it is emphasized in the case law, a statement in a specific case that imposed a penalty or the statutory threat of a penalty exceeds the minimum limits specified in the Article 607b of the CCP, and is therefore not tantamount to a positive assessment of the advisability of using the EAW.¹² It remains necessary to evaluate the issuance of the EAW through the prism of purposefulness, especially considering that it is an instrument that should be applied to cases of the highest gravity.

The principle of proportionality was also referred to by the Regional Court in the *Płock* decision of 25 April 2017.¹³ The Court stated that while Article 607b of the CCP posed no formal obstacles to the issuance of the EAW in the specific case, the application of the EAW would be disproportionate to the real need, and excessive from the perspective of the factual circumstances. This was justified by the considerable lapse of time that had passed from the moment the judgment had become final, which altered the factual and legal assessment of the circumstances of the case. It is in the public interest that persons who have committed a criminal offence are prosecuted fairly, and that the penal reaction meets its objectives. As a rule, the public interest prevails over the private interests of the convicted person and of the victim, but this depends on the nature and gravity of the offence committed, the circumstances in which it was committed and the characteristics of the offender. The considerable delay in the application of the measures of penal reaction, however, had the effect of diminishing the predominance of the public interest over the private interest in the form of the convict's private and family life. Therefore, the Regional Court considered that such a late application of legal measures with regard to the conviction made their application likely to constitute a disproportionate interference with the concerned person's rights, contrary to Article 8 of the European Convention on Human Rights (ECHR).¹⁴

Third, a key judicial remedy following a surrender under the EAW remains governed by Article 607e of the CCP specialty rule. It stipulates that the person transferred as a result of the execution of the EAW shall not be prosecuted for offences other than those for which the EAW is issued, nor shall he serve a penalty of imprisonment or other measures involving deprivation of liberty imposed on him in connection with such offences (Article 607e § 1 of the CCP). Moreover, the provision of Article 607e § 2 of the CCP stipulates that the court that issued the final judicial decision in the case may order the execution of a penalty for only those offences listed for the surrender of the requested person. Exceptions to the specialty rule are provided in Article 607e § 3 of the CCP, the existence of which, individually, excludes the application of the specialty rule referred to in the Article 607e § 1 of the CCP.¹⁵

11 Decision of the Regional Court in Konin of 17 March 2020, case no. II Kop 1/20, not published.

12 Decision of the Regional Court in Gdańsk of 29 July 2020, case no. XIV Kop 71/20, not published.

13 Case no. II Kop 25/16, Legalis no. 2090779.

14 See similarly: decision of the Regional Court in Gdańsk of 24 February 2020, case no. XIV Kop 153/19, not published.

15 The resolution of the Supreme Court of 24 November 2010, case no. I KZP 19/10, Legalis no. 266064.

With regard to the above-mentioned legal instruments, it can be said that effective protection pre- and post-surrender under EAWs issued by Polish judicial authorities for the purpose of prosecution are guaranteed.

Changes made in Polish law in the area of justice¹⁶ and related steps taken towards Poland at the EU level in relation to concerns about the rule of law, in particular as regards the independence and impartiality of the Polish judiciary, had an impact on cross-border judicial cooperation under the EAW FD, in cases where Poland acted as the issuing State. This results in the possibility for other Member States to make, in the context of the execution of EAWs issued in Poland, a preliminary assumption about the lack of effective judicial protection. Such a statement is confirmed in the jurisprudence of the Court of Justice of the European Union (Court of Justice), but is qualified: where there is evidence of systemic or generalised deficiencies concerning judicial independence in Poland, or of an increase in those deficiencies, that does not itself justify the judicial authorities of the other EU Member State refusing to execute any EAW issued by a Polish judicial authority. In this case, it is necessary to carry out a two-step test, in which it must be first determined that there are systematic and generalised deficiencies in the state of the issuing authority as regards the independence of the judiciary, and then that there are substantial grounds for believing that, on account of those deficiencies, there will be a real risk of breach of the person's right to a fair trial once he or she is surrendered to those authorities.¹⁷

The existence of a problem with the rule of law in Poland is also reflected in the jurisprudence of the European Court of Human Rights (ECtHR). This is especially visible in the judgment of 3 February 2022 in the case of *Advance Pharma sp. z o.o. v. Poland*, in which ECtHR found that after the reform of the Polish justice system in 2017, due to the lack of effective independence of the National Council of the Judiciary from the legislative and executive authority, the system of appointing and promoting judges in Poland is systemically flawed and violates the right to a fair trial.¹⁸ This approach was also reflected in previous judgments, in which the ECtHR held, respectively, that due to a defective procedure for appointing judges, the Disciplinary Chamber¹⁹ and the Extraordinary Control and Public Affairs Chamber²⁰ of the Supreme Court do not have the attributes of a tribunal established by law within the meaning of Article 6(1) of the ECHR.

16 In particular, the attention should be paid to the changes introduced by: the Act of 23 December 2015 amending the Act of 25 June 2015 on the Constitutional Tribunal (OJ 2015, item 1064), the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts (OJ 2018, item 3), the Act of 8 December 2017 on the Supreme Court (OJ 2018, item 5), the Act of 20 December 2019 amending the Act relating to the organisation of the ordinary courts, the Act on the Supreme Court and certain other acts (OJ 2020, item 190).

17 Judgments of the Court of Justice of 25 July 2018, *LM*, C-216/18 PPU, ECLI:EU:C:2018:586; of 17 December 2020, Joined Cases *L and P*, C-354/20 PPU and C-412/20 PPU, ECLI:EU:C:2020:1033; and of 22 February 2022, Joined Cases *X and Y*, C-562/21 PPU and C-563/21 PPU, ECLI:EU:C:2022:100.

18 ECtHR judgment of 3 February 2022, *Advance Pharma sp. z o.o. v. Poland*, no. 1469/20 ECHR (para 364-365).

19 ECtHR judgment of 3 February 2022, *Dolińska-Ficek and Ozimek v. Poland*, no. 49868/19 ECHR (para 353-355).

20 ECtHR judgment of 22 July 2021, *Reczkowicz v. Poland*, application no. 43447/19 ECHR (paras 280-282).

Summing up, it should be recognised that the situation related to the issue of the rule of law in Poland and doubts as to the independence of judiciary has and will have a major impact on cooperation and effective judicial protection, notwithstanding the fact that the provisions of the CCP seem to provide an appropriate framework for effective judicial protection in the issuing phase. The main problem seems to be the functioning of the National Council of the Judiciary in its current normative form.

Section II - Protecting fundamental rights in the executing state?

In Poland a 'fundamental rights' clause has been included in Article 607p § 1 (5) of the CCP. It provides that the EAW shall not be executed if it would violate the human rights of the requested person. This is a mandatory ground for refusal. It applies regardless of the type of crime committed.²¹

It has to be noted that in their complaints against the decisions of Polish courts regarding surrender under EAWs, defence counsels often raise a plea of violation of Article 607p § 1 point 5 of the CCP. They are usually considered unfounded, and therefore, with minor exceptions, do not lead to refusals to execute EAWs. An example is the Decision of the Court of Appeal in Katowice of 15 February 2017.²² The Court pointed out that a claim that the execution of the EAW would violate human rights must be supported by specific facts and circumstances. It cannot be the result of abstract considerations, and should take into account the specific procedural situation.

Establishing whether the premise under Article 607p § 1(5) of the CCP has been met cannot be the result of speculation or lack of confidence in the law enforcement authorities and the system of justice of another Member State. It is necessary to establish clearly and on an adequate basis that such an infringement will take place or that there is a very high probability bordering on certainty in this respect. In fact the assessment of whether the premise set out in Article 607p § 1(5) of the CCP has been met is not only a question of the degree of probability that fundamental rights in questions will be infringed. It seems that it would be more desirable to establish that such an infringement will occur if, in a given case, surrender takes place.²³

The discussed ground of refusal was also the subject of the assessment of the Polish Constitutional Tribunal in the judgment of 5 October 2010.²⁴ In this ruling, the Tribunal stated

21 Nita-Światłowska, B. (2021), 'Komentarz do art. 607p Kodeksu postępowania karnego', in: J. Skorupka (ed.), Kodeks postępowania karnego. Komentarz, Legalis: C.H. Beck, para. 5.

22 Case no. II AKz 77/17, Legalis no. 1637236.

23 Decision of the Court of Appeal in Rzeszów of 13 August 2013, case no. II AKz 159/13, Legalis no. 736013; decision of the Court of Appeal in Kraków of 18 December 2017, case no. II AKz 527/17, Legalis no. 1712559; decision of the Court of Appeal in Katowice of 4 April 2018, case no. II AKz 167/18, Legalis no. 1832046.

24 Case no. SK 26/08, OJ 2010, no. 189, item 1273.

that Article 607p § 1(5) of the CCP can be relied on in a situation where it is obvious for the court adjudicating on the execution of the EAW that the requested person did not commit the act in connection with which the EAW was issued and in the event that the description of the prohibited act to which the EAW relates is imprecise to the extent that it makes it possible to decide on the subject of execution such a request. At the same time, on the analysed background, the Tribunal considered that it is of secondary importance how the above-mentioned obstacle to surrender will be taken into account in a specific case, and in particular whether the refusal to surrender will be preceded by an application to the issuing Member State of the EAW pursuant to Article 607z of the CCP to supplement the information with a simultaneous indication of new circumstances disclosed in the case.

The analysis of Polish jurisprudence on the execution of EAWs shows that there are a few cases of refusal based on fundamental rights grounds.

In two related cases concerning Dutch EAWs, on 21 September 2020 the Regional Court in Warsaw²⁵ refused to execute EAWs relating to parental child abduction from the Dutch social services due to a risk for protection of human rights (right to private and family life, right to life). The Regional Court stated that the Dutch authorities had taken the child away from his parents without any verifiable reasons and that they had acted in gross violation of any internationally recognised psychological standards. The Court also noted that after their surrender to the Netherlands the parents would not only be placed in pre-trial detention, but would be deprived of parental rights too. In the situation where a child suffers for atypical early childhood autism, due to the possible significant deterioration of his health and his mental ailments, the court took into account not only the rights of the child, but also the well-being, health and even life of the child (in the last case, the court referred to the statutory conditions for euthanasia in the Netherlands in relation to a child of 12 years of age). Moreover, the Regional Court argued the refusal to execute EAWs with serious doubts as to the independence of the issuing authority (the reasoning was as follows: the issuing authority when deciding on the execution of EAWs issued by Polish judicial authorities is not objective, and asks several irrelevant questions concerning the remuneration of the judges, which are not translated into Polish).

There are also other examples of cases of refusals to execute EAWs based on the risk of violation of human rights.

On 19 May 2020 the Regional Court in Gdańsk²⁶ refused to execute an EAW to surrender a Swedish national accused of parental child abduction. The court stated that surrender would be contrary to the right to private and family life of the requested person and his son. In justifying its decision, the Regional Court stated that if surrendered, there would be a violation of Articles 18 and 48 of the Constitution of Poland²⁷ and Article 8 of the ECHR. The execution of the EAW would require the requested person to be deprived of his or her liberty, which would in consequence lead to the

25 Case no. VIII Kop 180/20 and VIII Kop 181/20, not published.

26 Case no. IV Kop 56/20, not published.

27 OJ 1997, no. 78, item 483.

deprivation of the right to be close to the child and to raise his son in accordance with his own beliefs, and at the same time would lead to the deprivation of the child's right to be close to the father and the right to be brought up by him in the family they created.

In another case the Polish court – pursuant to Article 607p § 1(5) of the CCP – refused to execute an EAW due to a mistake concerning the personal data of the requested person. The requested person was not the offender. His ID card had been stolen by another person who committed the offences using that ID and was convicted and sentenced under that false name.²⁸

To summarise this part of Research Brief, it should be stated that the judicial authorities in Poland in the field of the execution of EAWs do not apply the 'two step test' developed by the Court of Justice to discard that, in presence of 'generalised and systemic deficiencies' affecting the independence of the judiciary in the country of EAWs issuing, translate into an infringement of a wanted person's right to a fair trial. This problem rather concerns the execution of Polish EAWs in other EU Member States.

Section III Protecting fundamental rights through horizontal and vertical cooperation?

In reference to previous analyses, it seems justified to state that the judgment of the Court of Justice in joined cases *Aranyosi and Căldăraru*²⁹ did not have much significance for the dialogue between Poland as the executing state and the Member States issuing the EAWs. This results from the regulation of the mandatory ground of refusal to issue an EAW if there would be a violation of human rights in Article 607p § 1(5) of the CCP, and the development of its uniform interpretation in the Polish jurisprudence, which has not changed after the Court of Justice's judgment.

Significant from the perspective of the Polish jurisprudence, it does not follow that supplementary questions were asked by Polish judicial authorities in connection with the consideration of the application of the premise of Article 607p § 1 (5) of the CCP resulting in the mandatory refusal to apply the EAW.

M. Wąsek-Wiaderek and Adrian Zbiciak, based on the conducted research in the form of interviews with judges, emphasize that additional questions asked by Polish judicial authorities executing the EAW concern the following issues:

28 Wąsek-Wiaderek, M. and Zbiciak, A. (2022), 'The Practice of Poland on the European Arrest Warrant', in R. Barbosa, V. Glerum, H. Kijlstra, A. Klip, Ch. Peristeridou, M. Wąsek-Wiaderek and A. Zbiciak, *European Arrest Warrant. Practice in Greece, the Netherlands and Poland*, Hague: Eleven, p. 300.

29 Judgment of the Court of Justice of 5 April 2016, on Joined Cases *Aranyosi and Căldăraru*, C-404/15 and C-695/15, (ECLI:EU:C:2016:198).

- crediting the actual time spent in custody in a given case towards imprisonment;
- whether the judgment was issued in absentia;
- the place where an offence was committed;
- the description of an offence in order to classify it under Polish law.³⁰

In this context, it is important to note that there is no practice so far for Polish judicial authorities to submit questions for a preliminary ruling to the Court of Justice under the EAW execution procedure. As stated earlier in the Research Brief, the situation is different in the case of EAWs issued by Polish judicial authorities, mainly due to the application of the two-step test to the elevated 'generalised and systemic deficiencies' affecting the independence of the judiciary in Poland. This is reflected in additional questions asked by the authorities of other Member States acting in execution of Polish EAWs. As Małgorzata Wąsek-Wiaderek and Adrian Zbiciak argue, Polish judicial authorities are usually additionally asked:

- questions concerning the constitutional/structural position of the judiciary and judges in Poland;
- questions concerning the appointments of new presidents of courts in Poland, and disciplinary proceedings conducted against judges and questions as to whether the sentence executed upon surrender could be the subject of control by the extraordinary complaint and adjudicated by the new Chamber of Supreme Court (Extraordinary Control and Public Affairs Chamber);
- questions concerning the judges which are appointed to examine the case against the requested person, whether such judges were appointed by the new National Council of the Judiciary.

The authors also list other examples of supplementary questions, relating in general to, inter alia, conditions of detention; factual circumstances of the offence; circumstances appearing during the examination of the case or during the execution of a penalty.³¹

As a summary, it should also be noted that, on the basis of the analysis of jurisprudence of Polish courts, it is not possible to objectively determine whether, in the context of the additional questions asked related to the execution of the EAW, there were often problems related to obtaining or transmitting information in accordance with the presented questions. However referring to the justification of the already discussed decisions of 21 September 2020,³² the Regional Court in Warsaw drew attention to the practice of: irrelevant questions by

30 Wąsek-Wiaderek, M. and Zbiciak, A. (2022), 'The Practice of Poland on the European Arrest Warrant', in R. Barbosa, V. Glerum, H. Kijlstra, A. Klip, Ch. Peristeridou, M. Wąsek-Wiaderek and A. Zbiciak, *European Arrest Warrant. Practice in Greece, the Netherlands and Poland*, Hague: Eleven, p. 290.

31 *Ibidem*, p. 289.

32 Case. no. VIII Kop 180/20 and VIII Kop 181/20.

the executing authority (e.g. regarding the remuneration of the judges); sending only unsigned and untranslated questions; after obtaining answers from the Polish side, formulating further questions to answer additional questions, and after providing these answers, not taking any decision on the execution of the Polish EAW. The Regional Court also indicated that despite asking about the status of the authority of one of the Member States, in order to clarify doubts as to whether it may be qualified as a 'judicial authority' as understood in Article 6(1) of the EAW FD, it received no answer.

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Decision of the Regional Court in Gdańsk of 25 November 2020 (case no. IV Kop 70/20, not published)

Decision of the Regional Court in Gdańsk of 17 December 2020 (case no. XIV Kop 108/20, not published)

Decision of the Regional Court in Konin of 18 December 2020 (case no. II Kop 29/20, not published)

EU and international legislation

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, *OJ L 190, 18.7.2002, p. 1*

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Literature

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Availability of EAW-related jurisprudence

A relatively large part of decisions/judgments/resolutions relating to the issuing and executing of EAWs is available open access, such as on the website of the Supreme Court (https://www.sn.pl/orzecznictwo/SitePages/Baza_orzeczen.aspx) and in the database of common court judgments (<https://orzeczenia.ms.gov.pl/>). The decisions/judgments/resolutions are also published as part of legal information systems (LEX – <https://borg.wolterskluwer.pl/Products/Index.ashx> and Legalis – <https://sip.legalis.pl/>). Overall, there is no problem with access to the case law of the Supreme Court and courts of appeal. On the web, you can also find selected decisions of regional courts that adjudicate in Poland both on the issuance and execution of the EAWs.

There is however a problem with access to a large part of *regional court decisions*, although it is possible to gain access to them by accessing public information. However, it is necessary to apply to individual regional courts with relevant inquiries about sending the decisions.

It is difficult to pinpoint the criteria for publishing individual decisions/judgments open access. However, it appears that, in principle, the decisions/judgments of key importance for the application of the EAW are published.

In this author's view, there are no negative implications of the non-public disclosure of certain decisions related to the EAW.