

# Judicial Communications Office

10 June 2022

## COURT DELIVERS DECISION ON EXTRADITION TO POLAND

### Summary of Judgment

The Divisional Court<sup>1</sup> today refused leave to appeal against a decision to extradite the applicant to Poland.

A European Arrest Warrant (“EAW”) seeking the arrest of Kamil Czerwonobroda (the requested person, “RP”) and his return to Poland was issued on 27 February 2020. He is facing charges relating to the alleged possession, manufacture and supply of cannabis, amphetamines and ecstasy. In November 2020, the RP was located in Northern Ireland, arrested, brought before Belfast Recorder’s Court and remanded into custody. On 30 April 2021, the court ordered the RP’s extradition. The RP applied to the Divisional Court for leave to appeal against this decision.

The application for leave to appeal centred on the impact of legislative developments in Poland since 2015 including “the New Laws” affecting the judiciary which have raised concerns in many countries, including within the EU, that the independence of the Polish judiciary and fair trial rights in Poland have been undermined as a consequence. The grounds of appeal put forward on behalf of the RP were:

1. The court should have discharged the RP given that there is a real risk he will stand trial before courts which are not established by law;
2. It is sufficient for the RP’s discharge to find that there is a real risk that he will not stand trial before a court which is established by law, since a person seeking to challenge a request under an EAW cannot at the time of his extradition establish the composition of the courts before which he will be tried by reason of the manner in which cases are randomly allocated;
3. The absence of an effective remedy to challenge the validity of the appointment of judges in Poland, in circumstances where it is apparent that the RP cannot, at this point in time, establish that the courts before which he will be tried will be composed of judges not validly appointed, amounts to a breach of the essence of the right to a fair trial requiring the executing state to refuse the surrender of the RP;
4. The RP’s extradition would be a disproportionate interference with his right to private/family life and incompatible with his rights pursuant to article 8 ECHR especially where he has been in custody for more than one year and five months; “the offences are not of the highest gravity”; he was in custody during the pandemic which was particularly challenging; and the delay in his extradition has been brought about solely by behaviour on the part of the requesting state (“RS”);
5. The EAW system of extradition, being founded on the principle of mutual recognition, the court should decline to give effect to the Polish extradition request in circumstances where the Polish authorities are not recognising UK extradition requests.

At the hearing on 27 April 2022, counsel for the RP indicated that he wished to seek a stay or adjournment of the proceedings in light of a decision of the Court of Justice of the European Union (“CJEU”) in the case of *X and Y*<sup>2</sup> which was delivered in February 2022 in respect of two Polish EAW

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<sup>1</sup> The panel was Keegan LCJ, Treacy LJ and Maguire LJ. Maguire LJ delivered the judgment of the court.

<sup>2</sup> C-563/21 PPU

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cases. Counsel accepted that the *X and Y* decision had a direct effect on the RP's first three grounds of appeal (which also replicated the three issues referred to the CJEU by the Irish Supreme Court in the case of *Ministry of Justice and Security v Orłowski and Another* [2021] IESC 46). He said he could no longer seek to sustain grounds one and two in light of the decision in *X and Y* but contended that ground three remained unsolved as there was no effective remedy to challenge the validity of the appointment of judges in Poland. Counsel submitted that the way to deal with this lacuna was that the third issue should be left to one side in this court until such time as it could be determined by the CJEU when it came to deal with the *Orłowski* reference.

## Review of jurisprudence

At paragraphs [25] – [59] the court considered the decisions in *Orłowski*, *X and Y* and a judgment of Divisional Court in England and Wales (*Wozniak v Poland* [2021] EWHC 2557 Admin). The court said that having reviewed the cases it was left in no serious doubt that the current jurisprudence, both in the CJEU and domestically, has at its centre piece a two stage approach which must be carried out if it is claimed that an RP ought not to be returned to Poland on human rights or similar political grounds:

- The first step requires the executing judicial authority to determine whether there is objective, reliable, specific and duly updated material indicating that there is a real risk of a breach, in the issuing Member State, of the fundamental right to a fair trial guaranteed before a tribunal established by law;
- The second step requires the executing judicial authority to determine, specifically and precisely, to what extent the deficiencies identified in the first step are liable to have an impact at the level of the courts of the Member State to which the RP is to be extradited and whether, having regard to the RP's personal situation, the nature of the offence for which he or she is prosecuted and the factual context in which the EAW was issued, and having regard to any information provided by that Member State pursuant to Article 15(2) of Framework Decision 2002/584, there are substantial grounds for believing that the RP will run such a risk if he or she is surrendered.

The first stage of the process, in essence, is a general assessment whereas the second stage concerns the particular circumstances of the individual case. The court commented that in this case the only effective evidence before it related to a consideration of the first stage of the process:

“In our view, the position of the CJEU has been constant over a substantial period of time and it has been persistently affirmed as recently as February 2022 in *X and Y*. There is nothing in the CJEU's judgment [*in X and Y*] to suggest that the absence of an effective remedy by which to challenge an invalid appointment was or is to be viewed by itself and without compliance with the second stage test as sufficient to warrant a decision not to return an RP in respect of a duly issued EAW to Poland. Systemic deficiencies alone will not be enough.”

In addition, the court said it was inclined to give considerable weight and respect to the judgment of the E&W Divisional Court in *Wosniak*. It said the two stage approach was to the forefront of the decision in *Wosniak* which was evidently prepared as a test case in this field. The court noted that the judgment in *Wosniak* has now been followed elsewhere in the UK and while the court in NI is not strictly bound to follow it, it is well established in authority that in a matter involving the operation of a statutory scheme which applies throughout the UK, there is usually a strong impetus to do so:

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“It seems to us that there is relatively little to place in the scales on the other side, though this is not to say that, despite the current settled position, there could not be at some point a change of direction, particularly when the courts are dealing with a worsening situation. However, on the basis of the material before us, we are firmly of the view that at the present time there is no proper basis for refusing extradition in this sort of case.”

The court also considered there was no basis for a decision to adjourn the proceedings and no basis for the grant of leave to the Divisional Court. It said that any such grant, in light of the authorities, would be futile.

## **Other grounds of appeal**

The court declined to grant leave to appeal in respect of ground four. It noted the serious nature of the charges which the RP is facing and that his Polish criminal record disclosed seven convictions between 2011-2017 including convictions for armed robbery and kidnapping committed in Poland. The court said that in these circumstances the fact that he has served in the region of one and a half years on remand in custody in NI must be viewed in its due perspective:

“It seems to the court that while the offences he faces may not be of the highest gravity, they nonetheless fall within the category of serious offending. The court does not, additionally, consider any delay in this case to be of such length as to require the court not to extradite the applicant to Poland. Overall, the court would be slow to regard the contents of ground 4, including its reference to the pandemic, as being a persuasive or correct basis upon which to grant leave for a full hearing.”

The court also declined to grant leave on ground five. It said it was not deflected from approaching the matter on the basis of the need within Member States for co-operation when dealing with EAWs even though there were unsubstantiated claims that UK EAWs were not being recognised in Poland.

## **Conclusion**

The court said that as leave to appeal had been refused on all grounds, it must follow that the decision of the appropriate judge stands with the consequence that the RP must be returned to Poland in accordance with the terms of the Extradition Act 2003.

## **NOTES TO EDITORS**

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

**ENDS**

If you have any further enquiries about this or other court related matters please contact:

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