

**Judgment of the Polish Constitutional Tribunal concerning European Arrest Warrant
(release of 27th April 2005)**

On 27th April 2005, a plenary session of the Constitutional Tribunal examined a question of law referred by the Gdańsk Regional Court (IV Criminal Division) regarding the constitutionality of Article 607t § 1 of the Criminal Procedure Code 1997. The aforementioned provision permits the surrendering of a Polish citizen to another Member State of the European Union within the framework of the European Arrest Warrant (EAW). The basis of review was Article 55(1) of the Polish Constitution (“The extradition of a Polish citizen shall be forbidden”).

The Tribunal ruled that Article 607t § 1 of the Criminal Procedure Code, insofar as it permits the surrendering of a Polish citizen to another Member State of the European Union on the basis of the European Arrest Warrant, does not conform to Article 55(1) of the Constitution. Concomitantly, the Tribunal decided to delay the date of the loss of binding force of the challenged legal regulation for 18 months.

Article 607t § 1 of the Criminal Procedure Code was inserted into the Criminal Procedure Code by an Amendment Act of 16th March 2004. The objective underlying the aforementioned amendment was the transposition of the Council Framework Decision of 13th June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) into the Polish legal system. The Tribunal emphasised that it is competent to examine the conformity of normative acts with the Constitution. Such competence also extends to legal provisions serving to implement European Union law.

The Council Framework Decision of 13th June 2002 came into existence as an expression of the Member States’ desire to create a new legal institution, replacing extradition and based on the principle of mutual recognition of judicial decisions and mutual confidence between Member States. In accordance with Article 34(2)(b) of the Treaty on European Union, framework decisions may be adopted for the purpose of approximation of the laws and regulations of the Member States. They shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. The obligation to implement framework decisions is a requirement stemming also from Article 9 of the Polish Constitution, according to which “the Republic of Poland shall respect international law binding upon it”.

The subject of the Tribunal’s analysis was whether there exists any difference between extradition, within the meaning of Article 55(1) of the Constitution, and execution of a European Arrest Warrant. In responding to the question as to whether the surrendering, to another EU Member State, of a Polish citizen prosecuted on the basis of a European Arrest Warrant constitutes a form of extradition, the Tribunal emphasised that the manner and direction of interpreting legal provisions contained in acts of lower rank should be determined by constitutional norms. Definitions contained in acts of lower rank do not determine the interpretation of constitutional notions, since the latter have an autonomous character in relation to legislation in force.

The Constitutional Tribunal perceived certain differences between the European Arrest Warrant and traditional extradition procedures. The European Arrest Warrant (in

contradistinction to extradition) may be applied without fulfillment of the condition of double criminalisation of an act (i.e. the requirement that the act be recognised as a criminal offence both in Poland and in the country where the act was committed). Polish citizenship of the prosecuted person, or the political nature of the criminal offence, constitute two elements rendering extradition impermissible. These were not, however, enumerated within the catalogue of obligatory and facultative bases for refusing execution of an EAW. Extradition and European Arrest Warrants also differ from an organisational-competence perspective: the final decision as regards extradition is reserved for an organ of executive power whereas, in the case of an EAW, the decision is issued by a court. The procedures for applying an EAW were radically simplified and accelerated. The Tribunal emphasised that the Constitution fails to regulate those aspects which would determine the difference between surrender and extradition. This signifies that it would only be possible to consider the surrendering of a person prosecuted on the basis of a European Arrest Warrant as an institution distinct from extradition, as referred to in Article 55(1) of the Constitution, where the essence of each of these two institutions was different. In the examined case, however, no such situation arises. The Tribunal stated that the essence (core) of extradition lies in the transfer of a prosecuted, or sentenced, person for the purpose of conducting a criminal prosecution or executing an imposed penalty against them. The surrendering of a person prosecuted on the basis of a European Arrest Warrant has the same sense. Accordingly, it should be viewed as a particular form of extradition. The Constitutional Tribunal also noted that, from the perspective of the prosecuted person, their surrender on the basis of an EAW is a more burdensome institution than extradition, as regulated in the Criminal Procedure Code. It may therefore be concluded, in accordance with the *a minori ad maius* principle, that the constitutional prohibition of extradition is all the more applicable to surrendering a person on the basis of an EAW, which is realized with the same objective and is subject to a more burdensome legal regime.

The Tribunal underlined that the Constitution of the Republic of Poland endows those in possession of Polish citizenship with certain rights and obligations. Accordingly, citizenship constitutes an essential criterion for assessment of the legal status of an individual. In accordance with Article 17 of the EC Treaty “Citizenship of the Union shall complement and not replace national citizenship”. The nature of EU citizenship is therefore entirely dependant upon possession of national citizenship. Accordingly, it is unjustified to assume that, from the moment of Poland’s accession to the European Union – at which time Polish citizens acquired EU citizenship – the prohibition on extraditing its own citizens ceased to apply in respect of extradition to other Member States. EU citizenship is connected with the obtaining of rights but may not result in reducing the guarantee function of constitutional provisions relating to individual’s rights and freedoms.

As a rule, a Constitutional Tribunal judgment declaring the unconstitutionality of the challenged provision leads to the loss of binding force of that provision from the moment of the judgment’s publication in the Journal of Laws. However, the Tribunal decided to delay the date of the challenged provision’s loss of binding force for 18 months, which is permitted by Article 190(3) of the Constitution. Accordingly, the Tribunal’s judgment shall have only future effects (meaning that the unconstitutional provision will continue to possess binding force in the interim period) and, furthermore, may not constitute the grounds for challenging final judicial decisions hitherto delivered. During the period of delay, prior to this judgment’s entry into force, Polish legislation fulfills the obligation to implement the Framework Decision. In the present case, the direct consequence resulting from the judgment is insufficient to ensure a legal state conforming to the Constitution.

That objective may only be achieved by legislative intervention. In the Constitutional Tribunal's opinion, it is necessary to amend the law currently in force in order to permit complete implementation of the Council Framework Decision of 13th June 2002 in accordance with the Constitution. In order for that objective to be achieved, an amendment of Article 55(1) of the Constitution may not be excluded. In the event of a constitutional amendment, bringing national law into line with Union demands, the legislator would also be required to re-adopt those provisions governing the EAW which, as result of the judgment of the Tribunal – which was obliged to declare their unconstitutionality – will be eliminated from the law in force.

The Constitutional Tribunal emphasised that the EAW, as an institution, has crucial significance for the proper functioning of the administration of justice. The European Arrest Warrant is a form of advanced cooperation between the Member States, assisting the fight against crime and improving security. Accordingly, ensuring the continuity of its functioning should constitute the Polish legislator's highest priority.

The hearing was presided over by the President of the Constitutional Tribunal, Marek Safian, and the judge rapporteur was Tribunal judge Mirosław Wyrzykowski.

The judgment is final and its ruling shall be published in the Journal of Laws.

An English summary of the judgment will be available on this site in a few weeks.

The signature of the case is: P 1/05.