

# EUROPEAN ARREST WARRANT

## ISSUES BETWEEN THE UNITED KINGDOM AND POLAND

When the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States has been issued, finally the proceedings should have been faster and less complicated than extradition one. To find out more, we benefit from an exclusive article from Aleksandra Kowalik of Kancelaria Adwokacka Kowalik.

Indeed, the documents demanded and requested from the issuing State are less complex than before but the European legislator did not predict that the simpler procedures will cause the 'wave' of EAWs at least from Poland which is the largest applicant for the extradition orders.

The inevitability of the convictions and the penalties of imprisonment as a ground for the EAWs' wave.

The Polish criminal system legislator made an assumption about inevitability of the convictions and the penalties of imprisonment thus in the event of any pending cases (assuming that the sentence to serve is over 4 months- which is very low level taking into the consideration Polish Criminal Code) the Criminal Divisions apply for EAWs' issuing automatically even if the criminal offence seems to be trivial.

Furthermore, the similar rigour appears in case of not accused requested persons, as in Poland it is not legally possible to charge anybody in absentia, thus even when on the balance of probability the requested person (not charged) will not be sentenced for imprisonment without suspension; still EAW will be issued.

### **The Polish alternative for withdrawal EAW- the "iron letter".**

Polish Code of Criminal Procedure predicts an application for the "iron letter" (Latin: *salvus conductus*) which enables the requested person (does not concern convicted persons) to appear in Poland to attend the Police or Prosecution's interview

or Court's procedures with the assertion of immunity including arrest. The requested person is demanded to give the written statement (affidavit) pursuant to article 281 of the Code of Criminal Procedure in which the requested person declares his presence. The statement can also include an amount of deposit (optionally- if the deposit is demanded) and declaration of stay at the indicated address.

The "iron letter" procedure enable the EAW's discharge upon withdrawal, thus the District Judges sitting at Westminster Magistrates' and Crown Prosecution Service will not have to be involved in the proceedings anymore.

It must be highlighted that the initiative to apply for the 'iron letter' belongs to the requested person thus acting without the legal representation (criminal defence) excludes these proceedings as the majority of the prospective Clients have no clue about it.

Indeed the final decision belongs to the Polish Judicial Authority (appropriate District Judge) but in my conclusion the lack of the application constitutes a "legal sin" as in any event of the Polish Judicial Authorities' permission for the iron letter, the British expenses incurred for the execution of a European arrest warrant pursuant to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States article 30 section 1 could

have been saved as well as the Westminster Judges' and Crown Prosecution time spent over the case.

### **The joint sentences.**

Polish Criminal Code predicts the institution of the joint (cumulative) sentences which enable the Court to accumulate the penalties issued by the other Courts (in the separate sentences) in one sentence. The presumption of the joint sentence's institution is to sum the unitary penalties pursuant to the absorption rule. The joint sentence changes the previous sentences therefore it is essential to verify by the Polish Judicial Authority whether the EAW's request covers the joint sentence if otherwise the EAW should be discharged by the UK or (which in my point of view is the most significant) should have never been issued.

In my conclusion, I consider that the Polish Judicial Authority should provide more detailed information about the criminal offence and the implied system of the sentences and penalties as well as the better translations.

The above mentioned issues is only the modest draft of the problems relating to the EAW's execution between The United Kingdom and Poland. The meaningful issue that seemed to appear lately are the reapplications for extradition orders which already have been discharged in The UK. **LM**

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