

Helsinki Foundation for Human Rights comments CJEU judgment – what was Polish Government’s case?

The Court of Justice of the EU, in its judgment of 25 July 2018, ruled that a judicial authority called upon to execute a European Arrest Warrant (EAW) may refuse to do so if it finds that there is a real risk to the fairness of the judicial process in an EU Member State.

The case concerned a Polish citizen suspected of committing drug offences, who has been named in three EAWs issued by Polish courts. He was arrested in Ireland in May 2017 and during the proceedings before an Irish court objected to his surrender to Poland, arguing that his extradition would be prejudicial to his fundamental rights (e.g. due to prison conditions in Poland). While the Irish court did not share most of his arguments, it agreed with the claims concerning the concerns about the fairness of the proceedings before national courts in Poland, which may result from legislative changes introduced over the last 2 years. The Irish court made a preliminary reference to the CJEU, asking whether it was possible in such a situation to refuse to execute an EAW and whether the national court, before deciding on an application for surrender a person must determine the risk to the person concerned or, alternatively, what guarantees must be given.

The CJEU ruled that surrender may be refused if two elements are present, namely, there must be a systemic threat to the right to a fair trial in the Member State concerned and such a threat must be shown to exist in an individual case subject to the examination of the court executing an EAW. The CJEU has thereby developed its existing jurisprudence on the risk of breaching the prohibition of inhuman treatment in prisons.

During a press briefing on 25 July 2018, the Minister of Justice stated that “the operative part of the judgment closely reflects the position of the Polish government”. However, the documentation obtained by the Helsinki Foundation for Human Rights and the Forum of Civic Development shows that the Court did not share most of the arguments raised by the Polish government during the proceedings before the CJEU.

For example, the Government questioned the fairness of the European Commission’s application of December 2017 activating the procedure under

Article 7 of the Treaty on European Union, arguing that the assessments contained in the application could not have been more subjective. At the same time, the Court of Justice considered that “information in a reasoned proposal recently addressed by the Commission to the Council on the basis of Article 7(1) TEU is particularly relevant” for the purposes of the assessment of “a real risk, connected with a lack of independence of the courts of that Member State on account of systemic or generalised deficiencies there, of the fundamental right to a fair trial being breached”.

The Government also argued that “the Irish Court had no authority whatsoever to examine the state of the rule of law in Poland or to make an assessment in this respect”. On the other hand, the CJEU ruled that it was for a national court to assess the risk to the right to a fair trial in the Member State to which a person is to be surrendered on the basis of an EAW. Such an assessment must include a general review, for the purposes of which the national court may use, inter alia, a reasoned application of the European Commission, as well as an individual review of the case of a named individual.

In the Government’s view, the presented assessment has shown none of the above elements. According to the judgment of the CJEU, this assessment are to be carried out by the Irish court, however, taking into account the content of its question submitted to the CJEU, it seems that this court has no doubts as to the existence of systemic threats to the independence of the judiciary in Poland.

The Government argued, among other things, that “the merging of the offices of the Minister of Justice and Prosecutor General was not questioned even by the Venice Commission”. Meanwhile, in its opinion of December 2017, the Venice Commission indicated that the prosecution system should be depoliticised and that the offices of the Prosecutor General and the Minister of Justice should be separated from each other.

Source: <http://www.hfhr.pl/en/cjeu-judgment-what-was-polish-governments-case/>