

Regular contact  
with an adviser?

DZP's legal and tax alerts.

## Recognition of judgments of Polish courts in the EU in the light of the Judgment of the European Court of Justice of 25 July 2018 in Case C 216/18 PPU

The Court of Justice of the EU, in connection with a case concerning the extradition of a Polish citizen, against whom a European arrest warrant (EAW) was issued, expressed its opinion regarding judicial cooperation in criminal matters and exceptions from the mutual recognition principle if there are doubts as to observance of rule of law in the Member State issuing the EAW.

The judgment in a selected language version is available at:

<http://curia.europa.eu/juris/celex.jsf?celex=62018CJ0216&lang1=pl&type=TXT&ancre=>

### What did the case concern?

The case concerned a Polish citizen suspected of trafficking in narcotic drugs, against whom Polish courts issued three European arrest warrants. The person concerned was arrested in Ireland, where he did not consent to his surrender to Polish judicial authorities as he was afraid of being denied fair trial because of the recent legislative reforms of the system of justice in Poland. Those changes concerned in particular a modification of the act on the Supreme Court, the act on the National Council for the Judiciary, and the act on the organization of public courts. Those claims were, in the concerned person's opinion, confirmed by the European Commission's proposal of 20 December 2017 submitted in accordance with Article 7(1) of the Treaty on European Union regarding the rule of law in Poland.

The Irish court, trying to determine whether reforms in the Polish judicial system, in particular, in view of the European Commission's proposal of 20 December 2017 submitted in accordance with Article 7(1) of the Treaty on European Union, may result in the refusal or suspension of surrender of a suspect under an EAW, requested a preliminary ruling by the Court of Justice of the European Union.

## What did the Court of Justice decide in the judgment of 25 July 2018?

The resolution before the Court of Justice boils down to the conclusion that a judicial body may refuse to execute an EAW if in addition to determining a real risk of a flagrant violation of the right to fair trial in the issuing Member State, because of deficiencies of the judicial system in that Member State, it also concludes that the person against whom the warrant has been issued is exposed to the same risk.

## Consequence of the Court of Justice's judgment in relation to recognition of judgments of Polish courts in the EU Member States

Though the Court of Justice's judgment in Case C 216/18 PPU concerns the EAW procedure, the position taken by the Court of Justice is ground-breaking and may be important for the system of recognition and enforcement of court judgments in civil and commercial matters. The Court of Justice in its judgment described here concluded that national courts of the EU Member States should review whether a judicial system in the country issuing a warrant is independent and impartial.

To date, under the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, providing for a liberalized system for recognition and enforcement of judgments in the EU Member States, it was generally accepted that in view of the mutual trust, the administration of justice in the issuing Member State is not taken into account as a potential reason against recognition with reference to the *ordre public* clause. However, in the light of the Court of Justice's judgment in Case C 216/18 PPU this tendency may change.

## What now?

Since changes in laws regulating the Polish judicial system introduced by the Polish Parliament are generally criticized by the European Commission, which has initiated a procedure under Article 7(1) of the Treaty on European Union, an immediate consequence of the Court of Justice's judgment in Case C 216/18 PPU may be a significant slowdown of the procedure for recognition and enforcement of judgments of Polish courts in civil and commercial matters. It may be expected that persons against whom such judgments are issued will submit applications for refusal of recognition or enforcement of such judgments on the basis of Article 45(1a) and Article 46 of Regulation no. 1215/2012. Though a large majority of such claims will be unfounded, the very fact of a review by national courts in the EU Member States of the condition of the Polish justice system, may be time-consuming.

In view of the above, we would be glad to answer any questions you may raise with regard to the proceedings for recognition of Polish court judgments, in particular, to clarify whether the claim of the lack of court independence and impartiality may be raised in connection with a specific judgment.

For more information please contact Paweł Lewandowski, Partner, DZP or Dr Bartosz Karolczyk, Senior Associate, DZP.

## Please contact us



### **Paweł Lewandowski**

Partner, Co-Head of Dispute Resolution Practice

E: [Pawel.Lewandowski@dzp.pl](mailto:Pawel.Lewandowski@dzp.pl)

T: +48 660 440 327



### **Bartosz Karolczyk**

Senior Associate, Dispute Resolution Practice

E: [Bartosz.Karolczyk@dzp.pl](mailto:Bartosz.Karolczyk@dzp.pl)

T: +48 660 440 072