

AG: No Automatic Non-Execution of EAWs Issued by Poland

Thomas Wahl

News

At the end of July 2020, the Rechtbank Amsterdam referred to the CJEU the question of whether the "real risk" of an unfair trial due to the lack of independence of the Polish judiciary could justify a general ban on the execution of European Arrest Warrants (issued for the purpose of prosecution) from Poland ([Case C-354/20 PPU \(Openbaar Ministerie\)](#)). At the beginning of September 2020, the Dutch court referred a second case to the CJEU that deals with the execution of EAWs issued for the purpose of executing Polish sentences ([Case C-412/20 PPU](#)). The referring court argues that recent developments have had such an impact on the independence of the Polish courts that they can no longer be independent of the Polish government and parliament. In light of the worsening of the generalised and systemic deficiencies in the Polish justice system, the Rechtbank, in essence, is asking whether it is entitled to deviate from the CJEU judgment in [Case C-216/18 PPU \("LM" --> \[eucrim 2/2018, 104-105\]\(#\)\)](#) and whether it is entitled to refuse the surrender requested by Polish courts without having to examine in detail the specific circumstances of each EAW.

In his [opinion of 12 November 2020](#), Advocate General *Campos Sánchez-Bordona* takes the view that even intensification of the threat to judicial independence in Poland cannot lead to automatic refusal. On the contrary, the two-stage examination as established in the LM judgment must be maintained and rigorously followed by the national courts:

- (1) Examination of whether there is a real risk of fundamental rights infringements as a result of systemic or generalised deficiencies affecting the independence of the issuing judicial authority;
- (2) Specific and precise examination of whether the right to a fair trial could be breached in the specific case.

Failure to carry out the second step of the examination could lead to impunity for many crimes and thus to a violation of victims' rights. It would also discredit the work of all Polish judges. An automatic suspension of execution could only be considered in the event of a serious and persistent breach of the EU's fundamental values, as formally identified by the European Council. The conditions under which a judicial system can protect the principles of the rule of law would then no longer apply. This particular system makes it all the more necessary for the Rechtbank Amsterdam to rigorously examine the individual circumstances.

Background: Based on the decision of the CJEU in "LM", a German court refused, for the first time, surrender to Poland due to fair trial concerns in February 2020 ([--> \[eucrim 1/2020, 27-28\]\(#\)](#)). Recently, legal experts called on politicians to increase pressure on Poland to adhere to the rule of law, because the issue cannot be burdened to judges executing EAWs ([separate news item](#))

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

ISSN: 1862-6947
<https://eucrim.eu>



About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by
the European Union**