

Irish High Court Questions Fair Trial Guarantee in Poland after Surrender



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News

On 23 March 2018, the Irish High Court filed a [request for a Preliminary Ruling](#) under Article 267 TFEU. It concerned a request for surrender from Poland on the basis of a European Arrest Warrant (EAW).

In the case at issue ([2018] IEHC 153, the Minister for Justice and Equality v. *Celmer*), the Republic of Poland sought the extradition of a Polish citizen based on three EAWs in connection with drug offences.

The defendant referred to a document of the [European Commission “Reasoned proposal in accordance with Article 7\(1\) of the Treaty on European Union regarding the rule of law in Poland”](#) of 20 December 2017, in which the Commission concludes that the more than 14 consecutive laws passed in Poland within the last two years have posed a serious threat to the independence of the judiciary and the separation of powers and thus also to the rule of law. For these reasons, the Irish High Court was concerned that the defendant could become a victim of arbitrariness if extradited.

In the 2016 case *Aranyosi and Căldăraru (C-404/15)*, the CJEU ruled that, in the face of general or systematic weaknesses in the protection of the accused in the state concerned, the executing judicial authority must seek further information from the state concerned in order to clarify whether there are substantial grounds for exposing the individual accused to such risk.

The Irish High Court is now asking the CJEU whether further specific information needs to be collected if the court finds that the right to a fair trial has been so blatantly violated by the Member State concerned that the rule of law is no longer guaranteed. If so, how far does the duty of information go and what guarantees are necessary for a fair trial?

The case is sensitive because the foundations of the underlying principles of EU cooperation in criminal matters – mutual trust and mutual recognition – are shaken by the reference. The CJEU’s decision is likely to set a precedent, as the Irish High Court has already indicated that more Polish nationals being sought under an EAW are in custody and have requested that their case be stayed pending the CJEU’s decision.

The reference for the preliminary ruling is registered with the CJEU as [case C-216/18 PPU \(Minister for Justice and Equality\)](#).

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