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## **POLAND, IRELAND ... AND FUTURE OF EUROPEAN ARREST WARRANT**

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Rushed through Europe's institutions in the wake of 9/11, the European Arrest Warrant, a fast track extradition system, was meant to accommodate cross border cooperation in the fight against terror.

It quickly became the EU's flagship crimefighting tool, based on the principle of mutual recognition, which means that decisions in one EU member state will be carried out in all others.

In a comprehensive investigation into what happens to people after they are surrendered following a European Arrest Warrant, Fair Trials and its partners in Spain, Poland, Lithuania and Romania have uncovered evidence that shows how ordinary people are being swept into the system ruining their lives and those of their family members.

### **Minor offences**

Cases documented indicate that, far from being used to apprehend fugitives to be tried for participation in complex cross-border crimes such as terrorism, the European Arrest Warrant is too often being used to pursue people for minor offences or for investigatory purposes.

Families are needlessly ripped apart and jobs lost as a result.

And people are surrendered even when there are reasonable grounds to believe that they will not be given a fair trial or will be placed in prolonged pre-trial detention or in prison conditions that fail to meet even the most basic standards of decency.

And often there is not even a need for such a drastic measure to be applied.

Other mechanisms are available, such as the European Supervision Order, specifically designed to prevent people being transported for pre-trial detention, or the European Investigation Order, which opens up the possibility for questioning people abroad.

On the same day as the launch of our report, the EU Court of Justice published the "opinion of advocate general Tanchev" - widely known as the Celmer case.

The opinion is intended to inform the court in relation to a question of interpretation on the

European Arrest Warrant from Ireland.

The Irish Court refused to surrender a Polish national residing in Ireland to Poland for prosecution in relation to drug-related offences on the grounds of the attacks to judicial independence in the country.

The recent legislative and constitutional changes affecting the judiciary in Poland are at the centre of the ongoing and unprecedented 'rule of law procedure' triggered by the European Commission in January 2016, putting Poland under scrutiny.

The procedure may eventually lead to Poland being sanctioned for violating rule of law principles.

### **Poland's 'chilling effect'**

But in the meantime, pending a political outcome, should member states be sending suspects to Poland for trial, where there is no guarantee that tribunals are independent?

How can a person show that constitutional changes will impact his or her individual prosecution?

The Dean of the Warsaw Bar, Mikolaj Pietrzak, explained to Fair Trials how these changes could impact fair trial rights.

With the Polish minister of justice now enjoying the ability to dismiss and appoint heads of courts, there is great scope for concern about the "chilling effect" that this may have on judges who are under great pressure to issue judgments which are viewed favourably by the minister.

The influence of political appointments in Poland can already be felt in cases involving anti-government protesters.

Pietrzak pointed to the case of one judge who "acquitted anti-government protesters; immediately thereafter his judgement was overturned in appeal proceedings by another judge. That other judge, in the court of appeal, was immediately thereafter appointed to become the new president of the court in that area."

Politically sensitive cases do not just concern politicians themselves or political dissidents.

In the words of Pietrzak, politically sensitive cases could be "a case regarding abortion in a strongly Catholic country, a case concerning a possible violation of the law by the prosecution or the police".

In addition, the lack of judicial independence does not only affect politically-sensitive cases.

### **Knock-on effects**

Justice systems throughout the EU are looking at being more "efficient" – which broadly translates into more prosecutions, higher conviction rates, and less financing.

In such a context, there is real concern that judges will be pressured into making criminal justice more "efficient" at the expense of human rights.

If these developments all call into question the fairness of the trial, there will be little to no hard evidence that a person can bring forward to prove such unfairness □ and even less in cases we have documented in our research on the European Arrest Warrant.

In the Celmer case, the EU Court of Justice will not itself rule on whether the deficiencies in the Polish judicial system pose a threat to the right to a fair trial. This contentious task will be left up to the Irish High Court.

But even if the Irish High Court eventually rules that there is a risk of flagrant denial of justice for the person concerned, what can it do about it?

The advocate general's opinion suggests that the Irish court should postpone the surrender and seek information on such a risk from the Polish authorities.

But what sort of information capable of ruling out such a risk could the Irish court expect from Poland? And how could Poland give assurances to the Irish court that the person, once surrendered, will be guaranteed a fair trial?

At Fair Trials, we hope that the EU Court will distance itself from the advocate general's opinion and take this unique opportunity to develop a brand-new test for national courts to apply where the court believes that there are risks to the right to a fair trial as established in EU law, such as threats to the independence of the judiciary, in the receiving country.

Reinforcing fundamental rights safeguards is the only way forward to maintain mutual trust between member state and ensure the functioning of the European Arrest Warrant system in future.

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Kaynak/Source: