

Warsaw, 4 May 2009

KEY DEVELOPMENTS IN POLISH CRIMINAL LAW – RECENT MONTHS

**The Supreme Court decision of 3/03/09, case no. I KZP 30/08**

A few words of introduction

The decision is a reply to two questions raised by the Court of Appeal in Poznań.

The Supreme Court held that Polish courts are bound by the full sentence and penalty imposed on a Polish citizen who has returned to the executing Member State to serve a detention order passed against him in the issuing Member State. Conditions under which a person might be eligible for parole are part of the penalty decision.

This is an interpretation of the provisions of the Polish Criminal Code adopting the framework decision of 13 June 2002 on the European Arrest Warrant and extraditions between Member States and its relation to the Strasbourg Convention on the Transfer of Sentenced Persons of 21 March 1983. The purpose of the application of the described procedure by the Supreme Court is to obtain an adequate interpretation of law, which is normally binding on the court that submits a question, in some circumstances on other courts.

The decision is based on the following facts:

The crime was committed in England, the suspect – a Polish citizen was arrested in Poland and on the basis of a European Arrest Warrant, sent to England where a Crown Court convicted him (he was accused of offences under the Sexual Offences Act, Offences Against the Person Act, and Criminal Attempts Act) and sentenced him to two life sentences; to serve a minimum of nine years before being eligible for parole.

After the decision of the British Crown Court he was sent back to Poland to serve the sentence /conditions of art. 5 p. 3 of the framework decision/.

On his return to Poland, the Regional Court in Poznań commenced proceedings to adapt the ‘British penalty’ to Polish Regulations.

The defence argued that the Polish court should apply sanctions provided by the Polish Criminal Code for the same crime – imprisonment of between 2 to 12 years.

The Regional Court did not accept the arguments presented by the defence and held that although the crime committed corresponds to the relevant provisions of the Polish Criminal Code nevertheless the sentence cannot be transformed into a ‘Polish penalty’.

In the course of the appeal proceedings the Court of Appeal submitted questions to the Supreme Court.

The following arguments were put forward by the Supreme Court:

- when analysing relevant provisions of the Polish Criminal Procedure Code (607 - provisions adopting the framework decision on the European Arrest Warrant and extraditions between Member States) and some provisions of the convention on the Transfer of Sentenced Persons (9 -11) we see the same merit/scope of regulation and at first glance significant discrepancies in

**WARSAW** Head Office:  
Aleje Ujazdowskie 10, 00-478 Warsaw, Poland  
tel. : + 48 (0) 22 437 82 00, + 48 (0) 22 537 82 00  
fax. : + 48 (0) 22 437 82 01, + 48 (0) 22 537 82 01  
e-mail: warsaw@wardynski.com.pl  
KRS: 0000192239 NIP: PL5260107832

**Offices:**  
**BRUSSELS** e-mail: brussels@wardynski.com.pl  
**POZNAŃ** e-mail: poznan@wardynski.com.pl  
**WARSAW** e-mail: warsaw@wardynski.com.pl  
**WROCLAW** e-mail: wroclaw@wardynski.com.pl  
[www.wardynski.com.pl](http://www.wardynski.com.pl)

**PARTNERS**  
Tomasz Wardynski CBE  
Michał Barłowski  
Paweł Ciećwierz  
Dorothy Hansberry-Bieguńska  
Stefan Jacyno  
Danuta Pajewska  
Włodzimierz Szoszek  
Dariusz Wasylkowski  
Tomasz Zasacki

Jacek Bondarewski  
Ewa Butkiewicz  
Jan Ciećwierz  
Monika Hartung  
Morvan Le Berre  
Mirella Lechna  
Krzysztof Libiszewski  
Jan Nowicki  
Weronika Pelc  
Anna Pompe  
Marcin Radwan-Röhrenscheff  
Łukasz Szegda  
Izabela Zielińska-Barłózek

**SENIOR COUNSEL**  
Wiesław Szczepiński  
Elżbieta Gutkowska  
Michał Lachert

**OF COUNSEL**  
Ryszard Czerniawski  
Andrzej Heliasz  
Marta Litwińska-Werner  
Magdalena Niziołek  
Piotr Zimmerman



interpretation are possible;

- the framework decision did not require member states to relinquish full *exequatur* procedure as the Polish legislator did, e.g. Czech Republic and the Netherlands apply *exequatur* procedure in the scope of framework decision regulation;
- the way in which the framework decision is adopted in Poland fully respects its fundamental rules (contrary to the reservations made by the European Commission in the report dated 11 July 2007 on the implementation of the 2005 Council Framework Decision of 13 June 2002);
- there are no discrepancies between the Convention on the Transfer of Sentenced Persons and regulations of the Polish Criminal Procedure Code – one of the main conclusions of the court;
- the court found that the regulations may change when Member States implement the decision of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

### **Implementation of the framework decision of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders**

On 4 February 2009, provisions of the Criminal Procedure Code implementing the framework decision of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders came into force. The regulation does not significantly modify the framework decision.

### **Legal profession – more access to the legal profession.**

Better access of the public to the legal profession in Poland has been under discussion for the last four years, even becoming a political issue.

The rules on examinations for traineeships to the Bar have changed in the last two years to facilitate access to the Bar and the results will be apparent next year when a large group of people will hopefully pass their bar exam – positive forecasts talk of a one fifth increase in the number of professionals who can represent an accused in criminal matters.

The main complaint of the legal *status quo* proponents was that the quality of legal services would suffer, because the persons have been trained mostly in theory and do not have sufficient practical experience.

Opponents argued that the market would verify whether they have adequate professional skills - we will see...

Janusz Tomczak  
Adwokat  
Wardyński i Wspólnicy sp.k.  
Al. Ujazdowskie 10  
00-478 Warszawa  
tel.: (+48) 22 437 82 00, 537 82 00  
fax: (+48) 22 437 82 01, 537 82 01  
<http://www.wardynski.com.pl>  
e-mail: [janusz.tomczak@wardynski.com.pl](mailto:janusz.tomczak@wardynski.com.pl)