

Ireland, High Court, 2013/295, 2014/8, 2017/291, 19/11/2018, application of the ECJ Case C-216/18 Celmar case

Member State

 Ireland

Topic

Mutual Trust , Independence of the judiciary

Deciding Court Original Language

High Court

Deciding Court English translation

High Court

Registration N

2013/295, 2014/8, 2017/291

Date Decision

19/11/2018

National Follow Up Of (when relevant)

Case C-216/18 *Minister for Justice and Equality* (Deficiencies in the system of justice) [2018]
ECLI:EU:C:2018:586

EU legal sources and CJEU jurisprudence

Article 2 TEU

Article 7 TEU

Article 47 of the Charter of Fundamental Rights of the EU

Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States

Joined cases C-404/15 and C-659/15 *Aranyosi and C?ld?raru* [2016] ECLI:EU:C:2016:198

ECtHR Jurisprudence

Soering v the United Kingdom App no 14038/88 (ECtHR, 7 July 1989)

Al-Moayad v Germany App no 35865/03 (ECtHR, 20 February 2007)

Mirolaw Garlicki v Poland App no 36921/07 (ECtHR, 14 June 2011)

Othman (Abu Qatada) v the United Kingdom App no 8139/09 (ECtHR, 17 January 2012)

Subject Matter

Right to a fair trial, independence of the judiciary

Legal issue(s)

Flagrant denial of justice

National Law Sources

European Arrest Warrant Act 2003

Facts of the case

The Republic of Poland sought the surrender of Mr Artur Celmer pursuant to three European Arrest Warrant.

Mr Celmer objected to his surrender on the ground that following some legislative changes to the judiciary, his right to a fair trial could be breached.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

According to the High Court, there is a real risk connected with a lack of independence of the courts of Poland on account of systemic or generalised deficiencies. Those deficiencies will affect the court level before which Mr Celmer will be tried if he is surrendered.

However, generalised and systemic violations of independence are generally of themselves insufficient to amount to a flagrant denial of justice.

Mr Celmer has not produced statistics or any other kind of evidence of trials lacking in fairness in Poland after the laws regarding the judiciary came into force. Furthermore, it has never been suggested that the right to know the nature of the charge, the right to counsel, the right to an interpreter, the right to challenge evidence and the right to present evidence, have been breached in Poland after those reforms were passed.

Thus, the threshold for the refusal of surrender on the basis of real risk on substantial grounds that the essence of the fundamental right to a fair trial will be breached is not reached.

Relation of the case to the EU Charter

Article 47 of the Charter of Fundamental Rights of the EU

Relation between the EU Charter and ECHR

Article 47 of the Charter of Fundamental Rights of the EU and Article 6 ECHR

Use of Judicial Interaction technique(s)

References to the Irish Supreme Court's case law, to UK case law, to the CJEU's case law, and to the ECtHR's case law

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

Brown v Government of Rwanda [2009] EWHC 770

Orobator v Governor of HMP Holloway & Anor, Brown v Government of Rwanda [2009] EWHC 770

Attorney General v Marques [2013] IEHC 415

Attorney General v Damache [2015] IEHC 339

Government of Rwanda v Nteziryayo [2017] EWHC 1912

Lis v Regional Court in Warsaw [2018] EWHC 2848

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

Minister for Justice v Brennan [2007] IESC 21

Minister for Justice, Equality and Law Reform v Rettinger [2010] IESC 45

Minister for Justice and Equality v J.A.T. No. 2 [2016] IESC 17

Attorney General v Davis [2018] IESC 27

For what concerns CJEU's and ECtHR's case law, see above

Strategic use of judicial interaction technique (purpose aimed by the national court)

The High Court refers to the Irish Supreme Court's case law, to UK case law, to the CJEU's case law, and to the ECtHR's case law to clarify the notion of flagrant denial of justice

Notes on the national implementation of the preliminary ruling by the referring court

The High Court applied the *LM* test

Impact on national case law from the same Member State or other Member States

The ruling was upheld by the Irish Supreme Court (*Minister for Justice & Equality v Celmer* [2019] IESC 80).

The judgment has been taken into consideration and referred to in some subsequent rulings, such as *Minister for Justice and Equality v Orlowski* [2021] IEHC 109, *Minister for Justice and Equality v Lukasik* [2021] IEHC 4, and *Minister for Justice and Equality v Lyszkiewicz* [2021] IEHC 108.

(Link to) full text

https://www.courts.ie/acc/alfresco/9efb0c32-1f0e-40bd-bf9d-570af1f0de95/2018_IEHC_639_1.pdf/pdf#view=fitH

History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. *Minister for Justice & Equality v Celmer* (No. 1) [2018] IEHC 119
2. *Minister for Justice & Equality v Celmer* (No. 2) [2018] IEHC 154
3. *Minister for Justice & Equality v Celmer* (No. 3) [2018] IEHC 153
4. *Minister for Justice & Equality v Celmer* (No. 4) [2018] IEHC 484
5. *Minister for Justice & Equality v Celmer* (No. 5) [2018] IEHC 639

6. *Minister for Justice & Equality v Celmer (No. 6)* [2018] IEHC 687
 7. *Minister for Justice & Equality v Celmer* [2019] IESC 80
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