

**Slovenia, Higher Court of Maribor, Order II Kp 30824/2018, appellate, 19 July 2018,  
ECLI:SI:VSMB:2018:II.KP.30824.2018**

Member State

 Slovenia

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Topic

Trust (rule of law challenges affecting judicial cooperation under the EAW)

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Deciding Court Original Language

Višje sodišče v Mariboru

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Deciding Court English translation

Higher Court of Maribor

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Registration N

Order II Kp 30824/2018

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Date Decision

19 July 2018

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ECLI (if available)

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EU legal sources and CJEU jurisprudence

Article 7 TEU

CJEU, C216/18 PPU LM, [GC] 25 July 2018

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Subject Matter

In this case, the High Court of Maribor decided on the impact of the pending LM case to a concrete case of request for transferral of a Polish national to Poland under EAW.

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## Legal issue(s)

Independence of the judiciary of the requesting state under EAW procedure

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## National Law Sources

Articles 9, 10, 11, 23 Cooperation in Criminal Matters with the Member States of the European Union Act

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## Facts of the case

The defendant, who was accused of trafficking in narcotic drugs and psychotropic substances and membership in a criminal group, contested the EAW issued by Polish courts. He claimed that the EC triggered Article 7 of the TEU against Poland due to serious violations of rule of law in that MS. He invoked Case C216/18 PPU LM, at the time pending before the CJEU, stating that the Irish court doubted the fairness of the procedure in Poland and declined the transferal. Accordingly, the court should do the same. First, the investigating judge rejected his claims and proposed the transferal, stating that the applicant in the Irish case lived in Ireland, whereas the defendant in the case does not live in Slovenia. The District Court of Ptuj rejected the “residence” argument as false, but nevertheless allowed the transferral. It recognized the problems Poland was facing with respect to the independence of courts, but found that this cannot be interpreted in such way that this would mean that material independence in concrete cases would be jeopardised. The defendant appealed to the High Court of Maribor.

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

The High Court of Maribor held that the first instance court thoroughly and correctly responded to the defendant’s allegations. It added that the concrete and factual circumstances of the Irish case are not known and that there is no ground for believing that the decision of the CJEU could in any way impact this proceeding. Above all, as the first instance court rightly pointed out, the legitimate commitment of the judiciary in the Republic of Poland to maintain their independent position vis-à-vis the legislative and executive branches should in no way be interpreted in the sense that this would imply a lack of confidence in the material independence of the judicial decision-making of the Polish courts in purely concrete cases of criminal proceedings against alleged perpetrators or in any way cast doubt on the fairness of judicial decision-making. Hence, the appeal was rejected.

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## Other

Interestingly, the decision of the CJEU in C216/18 PPU LM was issued only a few days after the High Court of Maribor rejected the appeal. The decision in the case was probably correct as to the outcome, but failed to give a convincing explanation, why the LM case could not affect the judicial cooperation under EAW in the concrete case. Further, three judicial authorities failed to take due account of the pending case before the CJEU, which was similar to the case at hand. In both cases, the defendants were charged with drug trafficking and requested by Poland. The reasoning is also not coherent, as the court first recognized the serious problems Poland in the field of rule of law, but then held that such problems cannot affect independent decision-making in a concrete case, which is contrary to its previous holding, especially without specifying any reason for such

conclusion.

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(Link to) full text

<http://www.sodisce.si/vismb/odlocitve/2015081111420557/>

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Author

**Mohor Fajdiga, UL**

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

1. District Court of Ptuj, Order II K 30824/2018 of 11 July 2018
  2. High Court of Maribor, Order II Kp 30824/2018 of 19 July 2018
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