

Czech Republic, Nejvyšší správní soud (Supreme Administrative Court), 8 Azs 114/2021-46, supreme, 8. 12. 2021

Member State

 Czech Republic

Topic

Mutual trust

Sector

European Arrest Warrant, Asylum

Deciding Court Original Language

Nejvyšší správní soud

Deciding Court English translation

Supreme Administrative Court

Registration N

8 Azs 114/2021-46

Date Decision

08/12/2021

ECLI (if available)

ECLI:CZ:NSS:2021:8.Azs.114.2021.46

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

Art. 7 of the Treaty on the European Union

Art. 2(d), art. 9, art. 10 of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

Decision of the CJEU from 16. 11. 2021, Prokuratura Rejonowa w Mi?sku Mazowieckim, joined cases C-748/19 - C-754/19, ECLI:EU:C:2021:931

Decision of the CJEU from 6. 10. 2021, W. ?, C?487/19, ECLI:EU:C:2021:798

Decision of the CJEU from 15. 7. 2021, Commission v Poland (Régime disciplinaire des juges), C-791/19, ECLI:EU:C:2021:596

Decision of the CJEU from 2. 3. 2021, A.B. and Others (Nomination des juges à la Cour suprême - Recours), C?824/18, ECLI:EU:C:2021:153

Decision of the CJEU from 19. 11. 2019, A.K. (Independence of the Disciplinary Chamber of the Supreme Court), joined cases C-585/18, C-624/18 and C?625/18, ECLI:EU:C:2019:982

Decision of the CJEU from 24. 6. 2019, Commission v Poland (Independence of the Supreme Court), C-619/18, ECLI:EU:C:2019:531

Decision of the CJEU from 5. 11. 2019, C-192/18 - Commission v Poland (Independence of ordinary courts), C-192/18, ECLI:EU:C:2019:924

Decision of the CJEU from 28. 7. 2018, Minister for Justice and Equality (Deficiencies in the system of justice), C-216/18 PPU, ECLI:EU:C:2018:586

ECtHR Jurisprudence

Decision of the ECtHR from 8. 11. 2021, Doli?ska-ficek and Ozimek v Poland, applications no. 49868/19 a 57511/19

Decision of the ECtHR from 22. 7. 2021, Reczkowicz v Poland, application no. 43447/19

Decision of the ECtHR from 29. 6. 2021, Broda and Bojara v Poland, applications no. 26691/18 a 27367/18

Decision of the ECtHR from 7. 5. 2021, Xero Flor w Polsce sp. z o.o. v Poland, application no. 4907/18

Subject Matter

Asylum – European Arrest Warrant – Situation in Polish judiciary –

Legal issue(s)

What are the conditions under which a person who is to be extradited to Poland on the basis of a European Arrest Warrant may have access to international protection?

Request for expedited/PPU procedures

N/A

Interim Relief

N/A

National Law Sources

§ 2(4), § 12, § 12(b), § 14a of the Act no. 325/1999 Coll., Asylum Act (zákon o azylu)

Facts of the case

The applicant was arrested in the Czech Republic in 2019 on the basis of a Polish European Arrest Warrant for the purpose of being extradited to face criminal proceedings relating to drugs

and arms trafficking. Following his apprehension, he applied for asylum, arguing in particular that he was concerned about the political motivation of his criminal proceedings and the threat that his rights would not be respected. According to the applicant, the criminal proceedings are linked to a dispute between his father and a former Deputy Minister of Finance, against whom the applicant's father filed a criminal complaint in 2011 on suspicion of committing very serious crimes, following which the Deputy Minister was prosecuted and removed from office. In this criminal case, the applicant was supposed to cooperate with the Polish counter-intelligence service in order to obtain evidence. Another reason for the request for international protection is the ongoing dispute between the applicant's mother and the Polish Minister of Justice (and also the Prosecutor General).

The applicant's application was ultimately rejected as his story was found not to be credible. The administrative authority concluded that the grounds put forward by the applicant were not relevant for the purposes of asylum, as the proceedings did not show that he had been persecuted in his country of origin for exercising political rights and freedoms or that he had a well-founded fear of being persecuted for holding certain political opinions. This was subsequently upheld by the Regional Court and the applicant filed a cassation complaint with the Supreme Administrative Court.

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

With regard to the applicant's arguments concerning the threat of violation of his rights, the Supreme Administrative Court first stated in general terms that criminal prosecution may constitute a relevant ground for asylum and must not necessarily be linked only to the exercise of political rights. Therefore, where there is evidence of criminal prosecution of an applicant in the country of origin, the circumstances of the case and the situation in the country of origin must always be carefully assessed.

With regard to Poland, the Court notes that, following the controversial judicial reform, the level of protection of rights has moved away from Western standards. This is illustrated by a number of judgments of the Court of Justice and the European Court of Human Rights assessing various changes in the Polish judiciary.

On the other hand, although the reservations expressed by these two courts in these judgments about the Polish judicial system are serious, it cannot be assumed that the prosecution of a person for any offence in Poland constitutes, in a significant proportion of cases, a threat to these persons in the asylum sense. The situation in Poland does not in itself mean that every applicant for international protection from that country automatically qualifies for international protection, be it asylum or subsidiary protection. Such applications must be assessed on an individual basis, which is also in line with the case law of the Court of Justice.

At the same time, it is important not to lose sight of the fact that, although the international protection procedure and the extradition procedure are related, the aim and purpose of the two are different. Thus, if some EU Member States have decided, on the basis of the case law of the Court of Justice, to suspend the surrender of a Polish national in the context of the European Arrest Warrant procedure, this does not mean that such persons must be granted asylum protection without further consideration. The threat of criminal prosecution or a criminal prosecution that has already been initiated may be relevant for asylum purposes in such cases, provided that it is clear from the particular facts of the case that the circumstances of the applicant's prosecution deviate significantly from the usual standards in the country of origin, i.e. that it is not an ordinary criminal case, but a criminal prosecution that has been fabricated and is motivated and influenced by political or vested interests.

Applying these premises to the applicant's case, the Supreme Administrative Court agreed with the assessment that the part of the applicant's story concerning his father was not credible.

However, it criticised the Regional Court and the administrative authority for failing to deal at all with the second conflict between his mother and the Minister of Justice. The Court emphasised that if the authorities considered that this was also not credible, they should also justify and explain their conclusions on this part of the asylum application, particularly as the Minister of Justice, who is also the Prosecutor General, has extensive powers within the Polish judicial system. For this reason, the Court annulled both decisions and referred the case back to the administrative authority for a new procedure.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

consistent interpretation

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

The Supreme Administrative Court does not cite Regional courts' case law or other foreign courts case law.

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

The Supreme Administrative Court cites its own case law.

The Supreme Administrative Court cites many decisions of the Court of Justice and the European Court for Human Rights.

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

The Supreme Administrative Court wanted to show the decay of the Polish judicial system, although it subsequently found that this alone did not justify asylum protection.

Impact on Legislation / Policy

N/A

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

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission,

CEPEJ Reports, or CCEJ Reports?

No

Did the national court take into account national case law on fundamental rights?

Yes

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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

N/A

Connected national caselaw / templates

N/A

Other

N/A

(Link to) full text

<https://vyhledavac.nssoud.cz/DokumentOriginal/Html/675454>

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