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HARMONIZATION OF THE NATIONAL LAWS OF EU MEMBER STATES AND THE NECESSITY TO AMEND THE POLISH CONSTITUTION OF 2 APRIL 1997

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Summary. The subject of considerations in this study will be the issue of the consequences of introducing the provisions of the Framework Decision on the European arrest warrant into the legal order of the Republic of Poland, including the relationship of these provisions to the constitutional prohibition on the extradition of Polish citizens. In the opinion of the Criminal Law Codification Committee at the Minister of Justice, it follows that the implementation of framework decisions by a Member State is subject to the same rules and principles as the implementation of directives by a Member State.

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A Member State cannot justify the non-implementation of a directive by domestic law (including constitutional provisions). However, the issue of the effect of the framework decision is not directly related to the implementation (implementation) of that decision by a Member State, as it concerns the process of applying Community law by the courts of a Member State. The statement that the framework decision does not have direct effect is therefore irrelevant for the assessment of the compliance of the Polish provisions introducing the European arrest warrant with the provisions of the Polish Constitution. As a consequence, the issue of EAW implementation may be properly resolved by amending the Constitution of the Republic of Poland.

Keywords: European Arrest Warrant, extradition, constitution, amendment of the Constitution, jurisprudence of the Constitutional Tribunal.

Harmonizacja prawa krajowego państw członkowskich UE a konieczność zmiany Konstytucji RP z 2 kwietnia 1997 r. Przedmiotem rozważań niniejszego opracowania jest kwestia konsekwencji wprowadzenia do porządku prawnego Rzeczypospolitej Polskiej przepisów decyzji ramowej w sprawie Europejskiego Nakazu Aresztowania, w tym relacji tych przepisów do konstytucyjnego zakazu ekstradycji obywateli polskich. W ocenie Komisji Kodyfikacyjnej Prawa Karnego przy Ministrze Sprawiedliwości wynika z tego, że implementacja decyzji ramowych przez państwo członkowskie podlega tym samym regułom i zasadom, co implementacja dyrektyw przez państwo członkowskie. Państwo członkowskie nie może usprawiedliwiać niewdrożenia dyrektywy prawem wewnętrznym (w tym przepisami konstytucyjnymi). Kwestia skutków decyzji ramowej nie jest jednak bezpośrednio związana z wdrożeniem (implementacją) tej decyzji przez państwo członkowskie, gdyż dotyczy procesu stosowania prawa unijnego przez sądy państwa członkowskiego. Stwierdzenie, że decyzja ramowa nie ma skutku bezpośredniego, nie ma zatem znaczenia dla oceny zgodności polskich przepisów wprowadzających Europejski Nakaz Aresztowania z przepisami Konstytucji RP. W konsekwencji kwestia implementacji ENA może być właściwie rozwiązana w drodze zmiany Konstytucji RP.

Słowa kluczowe: Europejski Nakaz Aresztowania, ekstradycja, konstytucja, nowelizacja Konstytucji, orzecznictwo Trybunału Konstytucyjnego.

Poland's accession to the European Union implied the introduction of certain changes to the Constitution, which could not have been foreseen in 1997, when adopting the currently binding Constitution of the Republic of Poland. Among other things, the solutions adopted in Art. 55 sec. 1 had been changed. They concern the prohibition of extradition of Polish citizens, as they had to be adapted to the European Union (hereinafter: EU) procedure of the European

Arrest Warrant (hereinafter: EAW) (Safjański, 2004).[1] All doubts in this matter under Polish law were resolved by the Constitutional Tribunal in its judgment of 27 April 2005. Recognizing that Art. 607t § 1 of the Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws No. 89, item 555, as amended) to the extent that it allows the transfer of a Polish citizen to a Member State of the Union on the basis of the EAW, is inconsistent with Art. 55 sec. 1 of the Constitution of the Republic of Poland (Hudzik, Paprzycki, 2005, p. 46–48).[2]

The Tribunal appreciated the importance of the EAW for the functioning of the judiciary, but pointed out that it was necessary to amend the applicable law by implementing the Council's framework decision in accordance with the norms of the constitution.[3] In order for this task to be accomplished, it is nec-

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[1] Tomasz Safjański expressed the view that the EAW was the first concrete measure in the field of criminal law introducing the principle of mutual recognition of decisions in criminal matters (including convictions) in relations between EU Member States.

[2] The District Court in Szczecin ruled on July 22, 2005 (III Kop 24/05) that the failure to ensure reciprocity in the execution of European arrest warrants against own citizens by a European Union Member State is a negative premise for the execution of a Polish citizen issued by such a state against a Polish citizen, the European Arrest Warrant. M. Hudzik and K.L. Paprzycki, however, believe that the weakness of the court's argumentation is also manifested in the fact that although it states that the framework decision contains the condition of such reciprocity in its content, it does not indicate at least one provision of it that would prove it. Moreover, the provisions of the decision show the opposite conclusion when reading the regulations containing the obligatory and optional grounds for refusing to execute the European arrest warrant (Articles 3 and 4 of the Framework Decision). The provisions of the Code of Criminal Procedure (Art. 607p–607r) do not contain such a condition. Thus, in the absence of an appropriate reservation in both the Framework Decision and the Code of Criminal Procedure, the failure to meet the reciprocity condition cannot be the basis for a refusal to execute the European arrest warrant.

[3] The legal question was raised in connection with the case pending at the District Prosecutor's Office in Gdańsk for the issuance of a European arrest warrant (hereinafter: EAW or European warrant) for the surrender of Maria D. for prosecution in the Kingdom of the Netherlands . The court had doubts as to whether the application of the EAW was permissible in the legal status at that time. The Constitutional Tribunal decided that the obligation to implement framework decisions is a constitutional requirement resulting from Art. 9 of the Constitution, however, its implementation does not automatically and in every case ensure material compliance of the provisions of secondary law of the European Union and the acts implementing them into national law with the norms of the Constitution. The basic systemic function of the Constitutional Tribunal is to examine the conformity of normative acts with the Constitution, and this obligation also applies to situations where the allegation of unconstitutionality concerns this scope of the act, which serves the implementation of European Union law. In the same judgment, the Tribunal stated that the surrender of a prosecuted person on the basis of a European warrant could only then be considered as an institution different from the extradition referred to in Art. 55 sec. 1 of the Constitution, if it had a different essence. Since the sense (core) of extradition is to extradite a prosecuted or convicted person to a foreign state in order to conduct

essary to amend Art. 55 of the Polish Constitution. Following this judgment, in September 2006, the act amending the Constitution of the Republic of Poland was passed, giving a new wording to Art. 55. The introduction by the President of the Republic of Poland of the draft amendment to the Constitution of the Republic of Poland was related to Poland's international obligations resulting from the fact of belonging to the European Union and the content of Art. 9 of the Polish Constitution, which states that the Republic of Poland complies with international law that is binding on it. The entry into force of the amendment to the Constitution proposed by the President was intended to prevent violations of Community law and, moreover, to ensure the continuity of the application by Polish courts of the institution of the European Arrest Warrant (EAW).[4]

The subject of considerations in this part of the study will be the issue of the consequences of introducing the provisions of the Framework Decision[5] on the European arrest warrant into the legal order of the Republic of Poland, including the relationship of these provisions to the constitutional prohibition on the extradition of Polish citizens. In the opinion of the Criminal Law Codification Committee at the Minister of Justice, it follows that the implementation of framework decisions by a Member State is subject to the same rules and principles as the implementation of directives by a Member State. A Member State cannot justify the non-implementation of a directive by domestic law (including constitutional provisions). However, the issue of the effect of the framework decision is not directly related to the implementation (implementation) of that decision by a Member State, as it concerns the process of applying Community law by the courts of a Member State. The statement that the framework decision

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criminal proceedings against him or to execute the sentence imposed on him, then transfer of the prosecuted person to carry out the EAW proceedings against him, on the territory of another EU Member State, penalty or execution of a sentence of imprisonment or other measure involving deprivation of liberty must be considered as its variant. If the surrender is only a type (type, special form) of extradition regulated in Art. 55 sec. 1 of the Constitution, its specific elements (differences in relation to the statutory institution of extradition) may not result in the lifting of the constitutional obstacle to surrender, which is the Polish citizenship of the prosecuted person. P 1/05, Legalis No. 68295.

[4] Justification of the draft act amending the Constitution, Sejm print no. 580, https://orka.sejm.gov.pl/Druki5ka.nsf/0/D9C78AF5BC4ABCB5C1257170003FF1A7/$file/580.pdf (access: 4.11.2021). The Constitutional Tribunal (in the judgment P 1/05), finding on April 27, 2005, the unconstitutionality of the provision of the criminal procedure, on the basis of which it is possible to surrender a person with Polish citizenship to a foreign state, established an eighteen-month (maximum) period of postponement when its binding force ceased to exist. The necessary amendment to the Constitution, which entered into force on November 7, 2006, was a bit late.

[5] Official Journal of EU L 190 of August 18, 2002, https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=OJ:L:2002:190:TOC (access: 4.11.2021).

does not have direct effect is therefore irrelevant for the assessment of the compliance of the Polish provisions introducing the European arrest warrant with the provisions of the Polish Constitution. As a consequence, the issue of EAW implementation may be properly resolved by amending the Constitution of the Republic of Poland (Hofmański, 2005, p. 63–64).

A European arrest warrant is a judicial decision issued by a competent authority of an EU Member State for the purpose of the arrest and surrender of a requested person by another Member State for the purposes of criminal prosecution or execution of a custodial sentence or detention order.[6] In the literature on the subject, one can find the opinion that the EAW is a completely different legal solution than extradition (specified in Article 55 (1) of the Constitution in its original version). The EAW, unlike extradition, has no political element. Sometimes, despite the fulfillment of all the extradition conditions, it does not take place on the basis of retaliation, lack of reciprocity, etc. In the case of an EAW, such circumstances do not apply. Therefore, the European Arrest Warrant should not be equated with extradition (Kruszyński, 2005, p. 289–294; see Serzysko, 2005, p. 70–87; Brodowski, p. 463–478).

Pursuant to Art. 31 sec. 1 of the Framework Decision from 1 January 2004. it replaces the provisions of the conventions which hitherto governed extradition between the Member States.[7] At the same time, the provisions of the Framework Decision abolished the possibility of avoiding surrendering one's own nationals for the purpose of criminal proceedings (Garstka, 2005, p. 343–351). The introduction of the EAW and thus the replacement of the traditional extradition procedure between Member States by a new system of transfer of persons between judicial authorities determined the need to create an efficiently functioning legal and practical base for the cooperation of EU Member States in order to simplify and improve the functioning of the procedure related to issuing by EU Member States of prosecuted persons. This certainly means reducing the administrative procedures that accompanied the traditional

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[6] Vide: Art. 1 of the Framework Decision, https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:32002F0584 (access: 4.11.2021).

[7] It is about: the European Convention on Extradition of December 13, 1957. along with additional protocols of 1975. and 1978; European Convention for the Suppression of Terrorism of January 27, 1977. in the part on extradition; agreement between EU Member States on the simplification and modernization of methods of transferring extradition requests of May 26, 1989; The Convention on the simplification of the extradition procedure between the Member States of 10 March 1995; The Convention on Extradition between the Member States of September 27, 1996; Title III, Chapter IV of the Convention implementing the Schengen Agreement of 19 June 1999.

extradition procedure. The EAW was primarily intended to increase the quality and effectiveness of the fight against organized crime, in connection with the prospect of further and undoubtedly absolutely necessary development of the EU legal order, as well as increasing mutual trust between EU Member States. The above concerns, first of all, cooperation between the Member States in the field of justice. Practice shows that actions related to EAW requests are taken with extraordinary speed. In the context of several cases, it was found that it often happened that on the same day a person against whom an EAW had been issued was arrested, a decision on preliminary detention and a request for an EAW was issued.

The sources of the framework decision on the EAW and the related surrender procedures between EU Member States (hereinafter referred to as the framework decision) can be found in the 1997 Amsterdam Treaty (hereinafter referred to as TA),[8] because it was then that the construction of a common "area of freedom, security and justice" was initiated (Górski, Sakowicz, 2005, p. 266–314). For the catalog of EU purposes specified in Art. 2 TEU includes: "maintaining and developing the Union as an area of freedom, security and justice in which the free movement of persons is guaranteed, with appropriate measures in relation to the control of external borders, asylum, immigration, and the prevention and fight against crime". However, the main goal and task of the framework decision was to gradually change the extradition procedure used so far, based on the norms of international law or national law, and as a result, abandoning the terminology "extradition" in favor of "surrendering" the person sought by law enforcement authorities.

Apart from the terminological changes, the most controversial was the possibility of lifting the ban on surrendering one's own citizens based on the provision of Art. 55 sec. 1 of the Constitution of the Republic of Poland, expressed in the lack of consent to the extradition of citizens outside the country. Stanisław Steinborn, in his voice partially approving the judgment of the Constitutional Tribunal No. P 1/05, believes that the ban on surrendering one's own citizens applies regardless of whether the extradition is to be made to a state that complies with all human rights standards, or to any other country. The right to a fair and open trial (which would also result from the provision of Article 55 (1) of the Polish Constitution) is due primarily to Art. 45 sec. 1 of the Constitution of the Republic of Poland, not only to a Polish citizen, but to anyone under the

[8] Amsterdam Treaty, amending the Treaty on European Union (hereinafter referred to as the TEU), the Treaties establishing the European Communities and certain related acts Official Journal EC of 1997, C 340, p. 1.

jurisdiction of the Polish state, and therefore extradition that could violate it, will be unacceptable, regardless of whether it is a Polish citizen or a foreigner (Steinborn, 2005, p. 182–195).

The issue of the legal regulation of extradition was regulated quite early in the structure of the EU legal order. On December 13, 1957, members of the European Council adopted the European Convention on Extradition, which entered into force on April 18, 1960, and in Poland on September 13, 1993.[9] It contained, inter alia, a provision that allowed the parties to the convention to prohibit the extradition of their own nationals, as well as to prohibit extradition in a situation where the person surrendered for an offense was punishable by the death penalty.

Due to the quite bureaucratic procedure and the expensive and complicated system based on the aforementioned Convention, actions were taken within the European Union to improve the extradition procedure so as to make it simpler and faster. The above convention was supplemented by additional protocols in 1975[10] and 1978[11] and thus it became the basis of extradition procedures carried out by the countries of Western Europe.[12]

Among other things, the scope of judicial cooperation was defined in the Executive Convention of June 19, 1990 to the Schengen Agreement signed on June 15, 1985.[13] The provisions of the aforementioned act concerned the simplification and improvement of the extradition procedure, and concerned the introduction of an order to surrender persons prosecuted in another state – a party to the contract, as well as allowed for the extradition of the perpetrator with his consent without the need to initiate a formal extradition procedure, with the proviso that surrender is not prohibited by the legislation of the country concerned and that the person is granted access to defense.

Chapter IV of the aforementioned act includes provisions supplementing the agreements concluded under the auspices of the Council of Europe in the field of extradition of 1957 with additional protocols of 1975 and 1978. Regard-

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[9] Journal of Laws of 1996, No. 117, item. 557.

[10] ETS No. 86, the protocol entered into force on August 20, 1979, in Poland on September 13, 1994. (Journal of Laws of 1994, No. 70, item 307).

[11] ETS No. 98, the protocol entered into force on June 6, 1983, in Poland on September 13, 1993. (Journal of Laws of 1994, No. 70, item 307).

[12] Therefore, some Western European countries, in order to streamline the existing extradition procedures, started to prepare separate legal solutions aimed at simplifying the existing extradition procedures.

[13] The Schengen acquis was included in the Official Journal EU L 239 of September 22, 2000.

ing extradition, the following provisions were introduced: special provisions regarding France and Belgium, only the provisions of the requesting party are relevant to the interruption of the limitation period, states are obliged to permit extradition only in the case of indirect taxes, entering into the Schengen Information System is equivalent to a request for temporary application of arrests, in addition to diplomatic channels – requests are forwarded through competent ministries; it is possible to consent to extradition without formal extradition procedure if, in accordance with the applicable law in the state of the requested party, extradition is not clearly inadmissible, and the person being prosecuted, after being advised of her right to conduct formal extradition proceedings, consent to the extradition.

With the passage of time, however, it turned out that the existing extradition model did not work and does not meet the expectations placed in it, inter alia, due to the dynamic evolution and development of extradition, as well as the fact that the 1980s and 1990s brought difficult challenges related to it is imperative to take up the joint fight against growing and increasingly dangerous organized crime (Trzcińska, 2004, p. 91).

The problem in practice turned out to be the so-called extradition obstacles constituting circumstances permitting a refusal to surrender a person related, inter alia, to the nationality of the extradited person or the nature of the crime (political, financial) (Zielińska, 2000, p. 15–184).

Due to the priority importance of extradition in the system of international cooperation between the Member States related to combating crime, appropriate measures were taken in this direction by the Council of the European Union in the early 1990s. The establishment of closer judicial cooperation in criminal matters between the Member States only became possible after the creation of the EU under the Maastricht Treaty of 1992. under the third pillar covering "justice and home affairs". Therefore, under Art. K 3 TEU was concluded between the Member States on March 10, 1995. Convention on Simplified Extradition Procedure and on September 27, 1996. Convention on Extradition.[14]

In the 1995 Convention there are practical elements that significantly simplify the application of the extradition procedure and make it more informal (not as many formal documents were required to carry it out as before). Pursuant to Art. 2 of the aforementioned act, it became obligatory to obtain the consent of the surrendered person and the extraditing state for surrender, while the arrested person should have the right to legal aid. Moreover, as a rule, the issuing State may not refuse extradition on the grounds that the person concerned

[14] Official Journal EC C 313 30 of March 1995.

is a national of the issuing State, as well as the statute of limitations. 1996 Convention on Extradition indicated when extradition should not be refused. Article 2 of the Convention stipulated that extradition would be carried out in relation to all types of offenses for which the applicant country would be imprisoned or detained for a period of not less than one year.

Further significant changes were included in the Amsterdam Treaty of October 2, 1997, which entered into force on May 1, 1999. The fundamental intention of the Treaty was to establish police and judicial cooperation in criminal matters within the area of freedom, security and justice. In order to establish this area, the Amsterdam Treaty introduced a new Title IV to the Treaty establishing the European Community.

There was a significant change in Art. K 3 (currently Art. 31 TEU), which directly facilitated the extradition procedure between Member States. The said provision also stated that the task of judicial cooperation in criminal matters was to approximate the principles of criminal law in force in individual Member States in such areas as extradition or legal assistance.

The provisions of the European Council in Tampere (hereinafter referred to as the Conclusions), which took place on October 15–16, 1999, played an important role in the development of cooperation in criminal matters. During the summit, tasks were set out to accelerate the will to develop the EU as an "area of freedom, security and justice". It called for the swift achievement of the objectives set out in the Treaty of Amsterdam and the scope of cooperation was precisely defined. For the first time, the undisputed need for mutual recognition of decisions and court judgments was indicated, as well as the need to approximate legal provisions between Member States, which is to facilitate the cooperation of authorities and strengthen the judicial protection of individual rights (Peers, 2004, p. 5–36). The principle of mutual recognition, in the opinion of the European Council, should become the cornerstone of judicial cooperation in the Union in both criminal and civil matters (cf. Article 33 of the Conclusions). Mutual recognition of Member States' decisions was aimed at enhancing cooperation and protecting the rights of EU citizens, while ensuring that a judgment given in one country would not be challenged in another Member State (Górski, Sakowicz, 2002, p. 55).

Pursuant to the provisions of point 35 of the Tampere Conclusions, the Member States were obliged to ratify the two already mentioned extradition conventions, namely the Convention on the simplified extradition procedure of 10 March 1995. and the Convention on Extradition of September 27, 1996. It should be noted that the European Council also stressed that the formal extradition procedure between Member States should be abolished in relation to

convicted and evading justice and replaced with simple surrender pursuant to Art. 6 TEU. The European Council also underlined the necessity and desirability of creating a "fast track for extradition" while respecting the principle of a fair trial.

The EU acquis in the field of judicial and police cooperation as contained in the Tampere Conclusions is very important. The effects of the activities undertaken by the European Council include: in the field of cooperation in criminal matters – the creation of eleven framework decisions, including those relating to terrorism and the European arrest warrant, and the convention on mutual legal assistance in criminal matters, in the field of institutional cooperation – the creation of the European Judicial Network and Eurojust,[15] as well as the harmonization of substantive criminal law and the harmonization of criminal procedures (Trzcińska, 2004, p. 89–96).

The terrorist attacks in the United States of September 11, 2001, mobilized representatives of the Member States to take more specific and unambiguous legislative measures in the field of combating terrorism and punishing the perpetrators of terrorist attacks (Kuczyński, 2005, p. 63). On September 19, 2001, The European Commission has presented a Draft Framework Decision on EAW.[16] The draft proposed to replace the existing instruments of European law and bilateral extradition agreements between Member States with a unified legal measure based on the principle of recognition of court judgments (Gruszczak, 2002, p. 164).

At the extraordinary summit of the European Council in Brussels on September 21, 2001, a detailed EU action plan to fight global terrorism has been adopted. It reaffirmed political agreement reached with the Tampere Conclusions on the elaboration of an EAW, as well as the adoption of a uniform definition of terrorism. Ultimately, it was decided that such an order would replace the existing system of extradition, which operated between the Member States, and the introduction of the EAW was to contribute to the flexibility and improvement of this system, which allowed for the direct surrender of the wanted person

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[15] Provided in EU law by the Nice Treaty of February 26, 2001, in Art. 31 of the TEU para. 2. The aim of its activity is to stimulate and coordinate national proceedings in the field of crimes falling within the competence of the authority, facilitate legal assistance and the execution of extradition requests, as well as other forms of supporting broadly understood international cooperation. Eurojust's task is also to coordinate the activities of national prosecution offices, including the conduct of investigations and the handling of requests for legal aid.

[16] Commission of the European Communities, Proposal for a Council Framework Decision on the European Arrest Warrant and the Surrender Procedures Between the Member States, COM (2001)522 final/2.

to the judicial authorities of another Member State, with unambiguous guarantees of rights and freedoms.

Ultimately, the framework decision was adopted on 13 June 2002. and is the first concrete measure in the field of criminal law to implement the principle of mutual recognition, described by the European Council as "the cornerstone of judicial cooperation".[17]

The framework decision was issued pursuant to Art. 31 letters a) and b) and art. 34 sec. 2 lit. b) of the Treaty on European Union and constitutes a legal instrument of the third pillar of the EU, i.e. in the field of police and judicial cooperation in criminal matters. Its task is to coordinate the laws and regulations of the Member States. Each framework decision binds the Member States as to the result to be achieved, but leaves the choice of form and means to the national authorities. The above means that it is connected with the necessity to implement the framework decision into the national law system within the time limit specified in the decision. This means that, internally, the acts of national law which have been transposed in the Member States will be applied (Łazowski, 2003, p. 42). If this obligation is not met, the state will not be able to invoke the decision before the state courts and administrative authorities. The legal act implementing the framework decision must be published, and the implementation due to the subject matter of the regulation (criminal law) should take place by issuing an act of statutory rank.

The framework decision was implemented into the Polish legal system by the Act of March 18, 2004. on amending the Criminal Code Act, the Code of Criminal Procedure and the Code of Petty Offenses (J. of L. No. 69, item. 626). It entered into force on the day the Republic of Poland became a member of the EU, i.e. on May 1, 2004. As a result, two new chapters were added to the Code of Criminal Procedure: Chapter 65a, which regulates the situation when an EAW is issued by a Polish court, and Chapter 65b, which relates to cases where an EAW issued by a court of another Member State concerns a person staying in the territory of the Republic of Poland (K. Grajewski 2006, pp. 161–166).[18]

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[17] See point 6 of the preamble to the Framework Decision.

[18] Considering the constitutionality of the code regulation of the EAW, Krzysztof Grajewski recalled that the EAW "is not the first regulation transposed into Polish law that" touches „a constitutional provision relating to the issue of extradition, or – to be more precise – prohibiting the extradition of a Polish citizen. We had already dealt with such a situation under procedural criminal law a few years earlier, when the President of the Republic of Poland, on the basis of the law authorizing him to ratify the Rome Statute of the International Criminal Court (hereinafter the ICC Statute), ratified this statute. In art. 102 of the ICC's statute, its creators also made a specific distinction between the concept of surrender, i.e. surrender of a given

In practice, the EAW is one of the most frequently used instruments of judicial cooperation in criminal matters. After the period of excessively rash use of this instrument by the Polish judiciary at the end of the first decade of the 21st century, the number of warrants stabilized.[19] There is no logical justification for an absolute ban on extradition. Fighting crime (terrorism, organized crime, illegal drug trafficking), and thus – punishing even one's own citizen – is in the interest of every state.

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person by a state under the procedure provided for by the statute of the ICC, and extradition, which, according to the analyzed provision, is to mean surrender of a person by one state to another state on the basis of a treaty, convention or national legislation. It is hard not to resist the impression that this editorial procedure served precisely to avoid the accusation that the envisaged institution of delivering a person to the International Criminal Court may be considered contrary to the constitutional prohibition of surrendering one's own citizens (i.e. the prohibition of extraditing one's own citizens), which is a common constitutional standard in most cases. countries".

[19] Statistical Guide of the Judiciary – https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/ (access: 4.11.2021).

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