



# Cúirt Uachtarach na hÉireann Supreme Court of Ireland

**Minister for Justice and Equality v. Jakub Lyszkiewicz;  
Minister for Justice and Equality v. Wojciech Orłowski**  
**On appeal from: [2021] IEHC 108; [2021] IEHC 109**

## **Headline**

The Supreme Court today ordered the surrender of two appellants to Poland following a reference to the CJEU concerning the status of European arrest warrants issued by Polish authorities in light of existing evidence of systemic or generalised deficiencies concerning the independence of the judiciary in Poland.

## **Composition of Court**

Birmingham P., Dunne, Charleton, O'Malley, Baker JJ.

## **Judgments**

Dunne J. (with whom Birmingham P., Charleton, O'Malley and Baker JJ. agree)

## **Background to the Appeal**

Mr. Orłowski and Mr. Lyszkiewicz are both Polish nationals resident in Ireland, and are the subject of a number of European arrest warrants seeking their surrender to the Republic of Poland. They objected to surrender, arguing in the High Court that surrender would lead to a violation of their rights to a fair trial and an effective remedy under the European Convention on Human Rights and the Charter of Fundamental Rights. They contended that legislation passed in Poland raised the possibility that the Polish courts considering their cases may not be constituted in accordance with law, as interpreted and affirmed by the CJEU in *A.B. and Others (Appointment of Judges to the Supreme Court – Actions) Case C-824/18*. However, the appellants were unable to indicate at this stage whether there was a real risk that their particular right to a fair trial would be impacted i.e. only general deficiencies were evidenced.

In a judgment delivered by this Court on 23<sup>rd</sup> July 2021, Dunne J. referred three questions to the CJEU relating to the two-step test previously espoused by the CJEU in *LM (Minister for Justice and Equality (Deficiencies in the system of justice) Case C-216/18 PPU*. Following correspondence with the CJEU, two of these were withdrawn as this Court was satisfied that the ruling of the CJEU in *X and Y v Openbaar Ministerie (Tribunal established by law in the issuing Member State) Joined Cases C-562/21 PPU and C-563/21* dealt with those questions. The question remained as to whether the absence of an effective remedy to challenge the validity of the appointment of judges in Poland, in circumstances where it is apparent that the appellants cannot at this point in time establish that the courts before which they will be tried will be composed of judges not validly appointed, amounted to a breach of the essence of the right to a fair trial requiring the executing state to refuse the surrender of the appellants.

By Reasoned Order delivered on 12<sup>th</sup> July 2022, the CJEU reaffirmed the two-step approach outlined in *LM* and noted that evidence of generalised or systemic deficiencies in the state seeking surrender is not a sufficient reason to refuse surrender. Rather, a person objecting to surrender must provide precise and specific evidence of the extent to which their right to a fair trial will be undermined. While the CJEU went on to note that it is for each Member State court to assess the evidence for the

purposes of this step of the *LM* test, the fact that a person objecting to surrender cannot, at this point in time, identify the judge/judges who will hear their case is not a sufficient reason to refuse surrender.

The Court requested further submissions from the parties on the effect of the Reasoned Order of the CJEU. The appellants argued that the matters raised by the CJEU should be the subject of additional evidence and/or additional information pursuant to section 20 of the 2003 Act. The Minister argued that the appellants have not met the second step of the test identified in the reasoned order and had not established any risk of a breach of the right to a fair trial in their respective cases.

### **Judgment**

The appeal was dismissed.

### **Reasons for the Judgment**

Dunne J. held that the appellants were not in a position to identify a risk of a breach of the right to a fair trial in their particular cases. A complaint concerning the generalised deficiencies concerning the appointment of judges cannot result in a refusal under the test laid down by the CJEU. Although Dunne J. acknowledged that the appellants have been left in a “Catch-22” situation as the judges who will hear their cases remain undetermined, and therefore no specific risk of a breach of the right to a fair trial can be identified, she held that there was no alternative but to order the surrender of both of the appellants. **[15-16]**

### **Note**

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

### **Case history**

28 JULY 2022

ECLI:EU:2022:592

[2021] IESC 46

30 JUNE 2021

[2021] IESC DET 48; [2021] IESC DET 28

[2021] IEHC 108; [2021] IEHC 109

Further Oral submissions made before the Court  
Reasoned Order of the Court of Justice of the  
European Union

Judgment of the Supreme Court

Oral submissions made before the Court

Supreme Court Determinations granting leave

Judgments of the High Court (**judgments which  
was the subject of the appeal to the Supreme  
Court**)