

Ref. File No I KZP 21/06

## RESOLUTION

Of 20 July 2006

Supreme Court – Criminal Chamber in Warsaw at the court sitting attended by

Chairman: President of the Supreme Court Lech Paprzycki

Supreme Court Judges: Piotr Hofmański (rapporteur)

Stanisław Zabłocki

Court recorder: Marcin Pawełek

with the participation of a prosecutor of the National Prosecutor's Office Beata Mik  
regarding the case of **Adam G**

on examining, pursuant to Article 441 § 1 of Criminal Code Proceedings, the legal question presented by the Court of Appeal in Warsaw on decision of 20 June 2006, Ref file no II AKz 280/06, requiring fundamental interpretation of the Act to determine:

I. whether the expression included in the disposition of Article 607 k § 1 of Criminal Code Proceedings concerning surrendering a person for whom a European arrest warrant had been issued **“for the purposes of conducting against the person criminal prosecution”** (underlined by the Court of Appeal) should be interpreted literally, which would mean surrendering directly for conducting criminal prosecution, or whether a wider interpretation is admissible **“for the purposes of conducting criminal prosecution”** (underlined by the Court of Appeal), providing the option to surrender the person concerned by a European arrest warrant for other than criminal prosecution in the State issuing the European arrest warrant leading directly to establishing formal and legal conditions for criminal prosecution, which conditions are pending on issuing a discretionary decision by the judicial authorities of that State, and in particular when the decision is to determine that the requested person as an juvenile

under the law of the State issuing the European arrest warrant, is to bear responsibility in that State for the act committed meeting the premises of crime in criminal prosecution,

II. whether refusal to execute the European arrest warrant by Polish judicial authorities is admissible solely pending on premises given in the disposition of Article 607 p of Criminal Code Proceedings (absolute premises for refusal) and Article 607 r § 1 of Criminal Code Proceedings (relative premises for refusal), or whether such refusal is also admissible due to other reasons, e.g. statement by Polish judicial authorities of failure to satisfy premises stipulated in the disposition of Article 607 k § 1 of Criminal Code Proceedings.

#### **r e s o l v e**

**to provide the following reply**

**1. The judicial authorities of the Member State of execution of the European Arrest Warrant may refuse to surrender the requested person if it establishes that the warrant was issued contrary to admissibility premises of issue.**

**2. The question of whether the surrender of the requested person under a European Arrest Warrant is for the purpose of conducting – on the territory of another Member State of the European Union – criminal prosecution, is not determined by the law of the Member State of execution of the warrant but the Member State issuing the warrant, interpreted following the provisions of the Council Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (2002/584/JHA).**

**3. The issue of a European arrest warrant is admissible irrespective of whether criminal prosecution against the requested person were initiated in the issuing Member State. The surrender of such person can take place only if the conditions given as the basis of issuing the warrant indicate that such proceedings are lawfully possible.**

**4. As the surrender of the requested person takes place for the purpose of conducting criminal prosecution, the person for whom the warrant is issued, should be re-surrendered to the Member State of execution if the State issuing the warrant fails to initiate such proceedings.**

## S U B S T A N T I A T I O N

I. The legal issue requiring interpretation of the Act, presented by the Court of Appeal, appeared in the following factual circumstances.

On 26 April 2006, the Deputy King's Prosecutor of the Prosecutor's Office of the King's Prosecutor in Brussels issued a European Arrest Warrant for the wanted Adam G. born on 20 October 1988, a Polish citizen with permanent residence in Poland. The warrant was issued based on the provisional ruling of a Juvenile Judge in Brussels on 26 April 2006, ordering placement of Adam G. in the Public Establishment for Youth Protection. Both this ruling and the European arrest warrant were issued on suspicion of murder committed jointly with a second person on 12 April 2006 in Brussels, murder to facilitate robbery of Joe van H., pursuant to Articles 66, 461, 468 and 475 of the Belgian Criminal Code. This offence in Belgium is penalised with a life long detention sentence.

Adam G. was detained in Poland on 27 April 2006. On 29 April 2006 an application was submitted by the District Prosecutor in Warsaw to the District Court in Warsaw for execution of the European Arrest Warrant for Adam G., together with a motion to adopt provisional detention measures for the period of 3 months. The decision issued by the District Court in Warsaw on 29 April 2006 ordered application of preventive measures to Adam G. taking the form of provisional detention for a period of 3 months, that is to 27 June 2006, and delayed to 31 May 2006 the session on executing the European Arrest Warrant after receiving a statement of Adam G. on refusal to consent to surrender to Belgium and failure to apply the provisions Article 607e § 1 of Criminal Code Proceedings. Concurrently, the District Court addressed – pursuant to Article 607z § 1 of Criminal Code Proceedings – the Deputy Prosecutor of the Prosecutor's Office of the King's Prosecutor in Brussels, requesting

the texts of all regulations in the Kingdom of Belgium governing criminal responsibility for committing the crime of murder to facilitate theft of individuals over 17 years of age but not full of age. In reply to the request the Prosecutor's Office of the King's Prosecutor in Brussels explained the regulations on holding adult individuals responsible before the court, which at the moment of committing an offence were under 18 years of age, and an enclosure included the provisions of Articles 9, 79 and 80 of Belgian Criminal Code and Article 38 of the Belgian Youth Protection Act of 8 April 1965. The District Court was also advised that the Prosecutor's Office of the King's Prosecutor in Brussels intends to apply to the Juvenile judge to hand over the case of Adam G., therefore he would stand trial before the Belgian court as an adult.

On 11 May 2006, a Prosecutor delegated to the District Prosecutor's Office in Warsaw held a hearing of Adam G. in Warsaw, with the participation of the Deputy King's Prosecutor of Belgium, commissioners of the Belgian Federal Police and investigating judge of the Court of First Instance in Brussels and recorded the proceedings with visual and audible recording appliances.

The decision of 16 May 2006, of the District Court in Warsaw addressed the Prosecutor's Office of the King's Prosecutor in Brussels requesting additional explanations on the functioning mechanism of Article 38 of the Youth Protection Act of 8 April 1965, and in particular, whether it is possible – prior to surrendering Adam G. to Belgium – to move for applying in this case Article 38 of the Youth Protection Act of 8 April 1965, creating a situation in which on executing the European Arrest Warrant, the Polish Court would have knowledge on the procedure, according to which the requested person will be held responsible in Belgium.

A letter was received on 29 May 2006 from the Prosecutor's Office of the King's Prosecutor in Brussels, with an explanation that pursuant to Article 38 of the Belgian Youth Protection Act of 8 April 1965, a juvenile judge by passing a judgement must decide on the possible hand over of the case of a juvenile to the prosecutor, in effect of which the juvenile would stand trial as an adult. This decision is taken on obtaining relevant opinions and on accounting for such factors as: circumstances of committing the charged offence and nature of offence, penalty

history and personal features of the suspect. It has also been advised that in case of the Adam G., for whom a European arrest warrant has been issued, measures have already been adopted to determine necessary premises to hand over the case to the prosecutor (*inter alia*, a motion has been submitted to prepare an opinion, a hearing of Adam G. was held on 11 May 2006 in Warsaw), which indicate that the Juvenile Judge is seriously considering handing over the case to the prosecutor, especially in view of the seriousness of offence of which Adam G. is suspected, and the fact that he had previously been tried in Belgium for theft by the Juvenile Court.

Furthermore, information was provided that in case of a judgement passed by the Juvenile Court in Belgium pursuant to Article 38 of the Act of 8 April 1965, all earlier issued decisions regarding the case lose validity, including the decision providing grounds for issue of the European arrest warrant, and thus the need would arise to apply for a new warrant. The passing of this judgement prior to surrender of Adam G. to Belgium would result in an option for the suspect to file a protest against this judgement and consequential return of the case to the Juvenile Judge, i.e. to the state prior to commencing criminal prosecution.

On 31 May 2006, the District Court in Warsaw passed the decision to surrender Adam G. to the judicial authorities of the Kingdom of Belgium for the purpose of conducting criminal prosecution against him on the territory of Belgium, provided that Adam G. is re-surrendered to the territory of the Republic of Poland on valid completion of proceedings in the Member State issuing the European warrant. Substantiating this decision, the District Court in Warsaw – realising the complexity of problems faced – indicated that the surrender of Adam G. to Belgium is executed for the purpose of conducting criminal prosecution against him and in case of convicting by valid judgement, he should be – as a Polish citizen – send back to the territory of the Republic of Poland. Although the decision of the District Court does not formulate explicitly that re-surrender of Adam G. to Poland should also be effective should Article 38 of the Belgian Youth Protection Act of 8 April 1965 be not applied to his person, nevertheless by indicating that the surrender is executed for the purpose of conducting criminal prosecution, such a condition has in essence been expressed.

Moreover, at the sitting on 31 May 2006, the period of provisional detention of the requested person was extended to 31 July 2006

The decision of 31 May 2006 on surrender Adam G. to Belgium by virtue of the European arrest warrant has been challenged by his defence counsel.

The challenge drawn up by the counsellor at law Tadeusz de Virion brings in a plea of insult pursuant to Article 607k of Criminal Code Proceedings, that the surrendering of Adam G. to the judicial authorities of the Kingdom of Belgium is effected failing prior predetermination that the surrender is executed for conducting against him criminal prosecution. The author of the plea demands modifications to be made to the challenged decision stating refusal to execute the European arrest warrant for Adam G.

The plea drawn up by the counsellor at law Mikołaj Pietrzak raises additionally a plea of insult pursuant to Article 607r § 1 p. 6 in connection with Article 6 of Criminal Code Proceedings, involving failure to take the option to refuse to surrender the requested person to the authorities of the Kingdom of Belgium, though adjudging of a life sentence in Belgium is possible and that assurance of full implementation of the right to defence is possible only by conducting proceedings in Poland. Raising this plea the counsellor motioned for amendment of the challenged decision and refusal to surrender Adam G. to Belgium, or repeal the challenged decision and have the case remanded by the District Court in Warsaw.

Examining the appeals submitted by counsellors of the requested person on 20 June 2006, the Court of Appeal in Warsaw decided that the case requires a principal interpretation of the Act and postponing the sitting, handed over to the Supreme Court the legal issue referred to in the introduction extending the period of provisional detention for Adam G. to 27 July 2006.

In the substantiation of the decision, the Court of Appeal in Warsaw indicated that it is aware that proceedings pursuant to Article 38 of the Belgian Youth Protection Act of 8 April 1965, which were to be conducted in Belgium on surrender of Adam G., strives towards developing conditions for conducting relevant criminal prosecution, however it is not in itself criminal prosecution *sensu stricto*. Therefore, a question

arose whether the wording used by the legislator in Article 607k § 1 of the Criminal Code Proceedings „for the purpose of conducting criminal prosecution” should be strictly interpreted, or whether assuming a broad interpretation it can mean that in actual and legal circumstances of the examined case the purpose of surrender is to conduct criminal prosecution. Indicating arguments for each possible interpretation the Court of Appeal also notes an issue of primary nature with reference to the above. It relates to doubts whether adjudging on execution of the European arrest warrant, Polish judicial authorities are authorised to examine legal premises providing grounds for its issue. Doubts of the Court of Appeal refer to whether the catalogue of negative premises for executing the European arrest warrant stipulated in Article 607p and Article 607r of Criminal Code Proceedings is finite, or whether such premises may stem also from other regulations and in particular Article 607k § 1 of Criminal Code Proceedings, which allows to surrender the requested person to judicial authorities of another European Union Member State only if it is executed for the purpose of conducting criminal prosecution.

The Prosecutor of the National Prosecutor’s Office, taking a stand on the issue stated that as regards the European arrest warrant (Article 607l of Criminal Code Proceedings) judicial authorities firstly examine whether the European warrant complies with the requirements of Article 607k § 1 of Criminal Code Proceedings and European Union Council Framework Decision of 13 June 2002 (2002/584/JHA) on the European arrest warrant and surrender procedures between Member States, and next whether circumstances referred to in Article 607p of Criminal Code Proceedings, Article 607r of Criminal Code Proceedings and Article 607s of Criminal Code Proceedings do occur.

II. Considering the legal issues presented by the Court of Appeal the Supreme Court came to the conviction that they conform with requirements specified in Article 441 § 1 of Criminal Code Proceedings, as they refer to an issue of complex nature previously not contemplated by judicature, and the adopted interpretation manner affects the case resolution.

Several initial assumptions need to be explained prior to presenting the fundamental deliberations of the Court of Appeal in Warsaw.

Firstly, it must be assumed that proceedings presently undertaken with reference to the case of Adam G. in Belgium pursuant to Article 38 of the Belgian Youth Protection Act of 8 April 1965 are intended to reach a decision as to the procedure applied to hold Adam G. responsible and the same is not criminal prosecution itself. This procedure may result in initiating criminal prosecution (transfer of the case to the prosecutor) or conducting juvenile proceedings. The latter irrespective of how classified in the legal system of the issuing Member State and Member State of execution of the European arrest warrant, is not criminal prosecution under European Union Council Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (2002/584/JHA). This decision is not applicable to these kinds of proceedings. Though no article in the Framework Decision nor – consequentially – domestic Acts implementing the decision explicitly states the above, nonetheless, as rightly indicated in the substantiation to the decision of the Court of Appeal in Warsaw, Article 5 of the preamble to the Framework Decisions speaks of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences. It should also be noted that the Opinion of the European Economic and Social Committee on the prevention of juvenile delinquency, ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union of 9 May 2006 (2006/C 110/13), which points to the lack of any common strategy in combating juvenile crime and the legal instruments adopted, such as the European arrest warrant, are not applicable to this category of offenders.

Unfortunately, the Polish judicial authority is deprived of a lawful option to formulate a prejudicial question to the European Court of Justice on the grounds of Article 35 of the Treaty on European Union, because Poland has not, as of today made a declaration on recognising competence thereof with reference to third pillar instruments of the European Union pursuant to Article 35 par. 2 of the Treaty. Meanwhile the question of applying the European arrest warrant to juvenile cases is an issue within the scope and validity of the Framework Decision of 13 June 2002.

Bearing in mind this normative condition, the Supreme Court must take an independent stand on the issue in question.

This preliminary assumption, following which the procedure stipulated in the Framework Decision does not apply to juvenile cases, opens the issue on understanding the purpose of surrendering the requested person under the European arrest warrant.

The second preliminary matter relates to the hierarchy of legal issues in the judicial decision of the Court of Appeal in Warsaw presented to the Supreme Court. There is no doubt that the issue presented as the second is of primary nature and the need to analyse the issue presented as the first is pending on resolving the second. There can thus be no doubts that examination of the purpose of the judicial authorities of another European Union Member State that issued the European arrest warrant is nothing more than repeated examination (a kind of verification) of premises, the conformity with which admits warrant issue. Therefore, the need to consider interpretation of the requirement to issue the warrant "for the purpose of conducting (...) criminal prosecution" is pending on the positive answer to the question. Due to the above, the structure of thesis in this resolution of the Supreme Court does not correspond to the structure of legal issues presented by the Court of Appeal in Warsaw. Moreover, the Supreme Court considered it appropriate to analyse the legal issue in a slightly wider context, taking into account the fact that both the substantiation of the decision of the District Court of 31 May 2006, and that of the decision by the Court of Appeal in Warsaw of 20 June 2006 induce the need to regulate the terms and definitions as regards application of regulations on surrendering persons pursuant to the European arrest warrant procedure between European Union Member States.

III. Formulating the legal issue marked as second, the Court of Appeal in Warsaw admits an option to treat circumstances referred to in Article 607k § 1 of Criminal Code Proceedings, as additional premises for refusal to execute the European arrest warrant. The same trend is represented in the letter of 30 June 2006 by the

Prosecutor of the National Prosecutor's Office. This assumption is deemed to be false by the Supreme Court. The premises for executing the European arrest warrant are formulated exclusively in Article 607p and Article 607r of Criminal Code Proceedings (and in case of a European warrant issued for the purpose of executing a custodial sentence or detention order – also in Article 607s of Criminal Code Proceedings). These regulations result from implementation of Article 3 and 4 of the Framework Decision of 13 June 2002.

The purpose of the European arrest warrant (conducting criminal prosecution) is one of the premises of warrant issue, not its execution. It is the duty of the judicial authorities of the Member State issuing the European arrest warrant to assess whether the purpose of demanding surrender of requested person is conducting criminal prosecution. The premises (similarly as for example suspicion of committing an offence) cannot be thus treated the same as premises of executing the warrant, and if so – in limited scope – are subject to control of judicial authorities of the Member State executing the warrant, as regards the admissibility to issue the warrant but not the admissibility of surrendering the requested person to the Member State, which issued the warrant.

With reference to the above, the issue of whether the judicial authorities of the Member State of execution are permitted to repeatedly determine (verify) premises underlying the decision to issue a warrant appears to be fundamental. Judicial decisions up to date present divergent views to the issue. And so, for example the Irish High Court in two decisions of 9 September 2005 and of 14 October 2005 issued in the case *Minister of Justice, Equality and Law Reform versus Michael Falkon* (2005 36Ext), quote: M. Hudzik, *Europejski nakaz aresztowania a nieletni sprawcy czynów zabronionych – zagadnienia wybrane [European Arrest Warrant and juvenile offender – selected issues]* (article submitted for print in *Europejski Przegląd Sądowy [European Court Review]*) acknowledged admissibility of such verification, expressing however a reservation that only in exceptional cases (similarly the Court of Appeal in Kraków in the decision of 15 July 2004, II AKz 257/04, *Krakowskie Zeszyty Sądowe* 2004, no 9, item 41). A different standing was taken by the Belgian Court of Cassation in the decision of 25 January 2005 issued in the Flemish section, 2

Chamber, P.05,0065,N (quote M. Hudzik, as above), inferring that the judge deciding on execution of the European arrest warrant does not examine its conformity with law as this is restricted exclusively to the authorities of the Member State issuing the warrant. In literature the issue has not been widely analysed, however, isolated opinions were noted where examining conformity with law of the European arrest warrant in the Member State of execution is not barred (S. de Groot, *Mutual Trust in (European) Extradition* (in:) R. Blexton (ed.), *Handbook on the European Arrest Warrant*, The Hague 2005, p. 91; F. Impalà, *The European Arrest Warrant in the Italian legal system. Between mutual recognition and mutual fear within the European Area of Freedom, Security and Justice*, *Utrecht Law Review*, Volume 1, Issue 2 (December) 2005, p. 70; M. Hudzik, *Dobre narzędzie, niedobra sprawa [Good instrument, bad case]*, *Rzeczpospolita* 2006, no 132). The Supreme Court is of the opinion that verification of conformity of the European arrest warrant is lawfully admissible in the Member State executing the warrant but in a very limited scope and solely with reference to some premises of issuing the warrant. It should be particularly emphasised that it is not admissible to verify the grounds of the decision of the judicial authorities of the State issuing the warrant, which are an assessment by nature. These certainly include the ascertainment that there is a justified suspicion of an offence being committed by the person whom the warrant names (see the decision referred to above of the Court of Appeal in Kraków of 15 July 2004). A different nature is attributable to such premises as, for example, the competence of a concrete judicial authority to issue a warrant.

As a side note of deliberations on legal issues presented by the Court of Appeal, it should be noted that with regard to the competency of the Prosecutor of the Prosecutor's Office of the King's Prosecutor in Brussels to issue a European arrest warrant in the case of Adam G., serious doubts may arise. Pursuant to Article 32 § 2 of the Belgian Act of 19 December 2003, implementing the European arrest warrant, the competency of the King's Prosecutor to issue the European arrest warrant are limited to a situation where the surrender can be effected with the purpose of executing a custodial sentence or detention order, referred to Article 2a of Framework Decision of 13 June 2002. European arrest warrant issued for the purpose of conducting criminal

prosecution against a person (and based on the decision for provisional detention or other decision of similar nature) should be issued pursuant to Article 32 par. 1 of the Belgian Act of 19 December 2003, by the investigating judge. This statutory solution must be taken into consideration with regard to the European arrest warrant issued in this case, where in p. b) indicating the decision providing grounds for drawing up the warrant, decision of the Court of First Instance – Juvenile Court in Brussels of 26 April 2006, (the arrest warrant or judicial decision having same effect) is given in p. 1, and not in p. 2 (enforceable judgement). These remarks do not allow for an unambiguous statement that in this case the European arrest warrant was issued by an unauthorised person as we must also bear in mind that the proceedings presently in progress in Belgium, have not been handed to the prosecutor pursuant to Article 38 of the Belgian Youth Protection Act of 8 April 1965, thus the competence of the investigating judge to issue the decision may be questionable. This issue lies beyond the scope of examining the case by the Supreme Court due the range of legal issues presented pursuant to Article 441 § 1 of Criminal Code Proceedings. Prior to issue of the final decision on executing the European arrest warrant, it is necessary in this case to consider the issue in view of Article 2 § 3 of the Belgian Act of 19 December 2003, according to which the European arrest warrant is a decision issued **by competent judicial authorities** of the European Union Member State.

According to the assessment made by the Supreme Court, the purpose for which the European arrest warrant is issued is also a premises requiring verification. Therefore, it is clear that the statement of the judicial authorities of the Member State executing the warrant that the warrant is issued for the purpose of, for example, conducting civil proceedings, must in consequence result in refusal to execute the warrant. Thus, there can be no doubt that in such circumstances refusal to surrender the requested person does not result from negative premises to execute the warrant but because the warrant was issued in spite of failure to satisfy the premises for issue thereof in the Member State demanding surrender of the requested person (i.e. the statement that the decision to hand over the warrant to the Member State of execution is not in fact a European arrest warrant).

There is no doubt that the check examination of the premises to issue the European arrest warrant must precede an assessment ascertaining that no negative premises occur for its execution (both those that make surrender of requested person to the territory of another Member State inadmissible and those which only admit refusal to execute the warrant).

The admissibility of negative verification of premises providing grounds for issuing the warrant in the Member State of its execution must be, as emphasised above, limited to absolutely exceptional cases, as governed by the principle of mutual trust, which constitutes the basis of judicial cooperation between Member States of the European Union.

The opinion presented requires a supplementary statement that the assessment of conformity or lack of conformity with premises for issuing the European arrest warrant must in each case be made from the perspective of the domestic law of the Member State issuing the warrant, and always take into account provisions of the Framework Decision, which the interpreted regulations transpose to the domestic legal order. An attempt at such a verification, by the judicial authorities of the Member State executing the warrant, in view of legal regulations of that State and not the law of the Member State issuing the warrant, could lead (though not necessarily, taking into account the fact that domestic regulations should precisely transpose the same Council Framework Decision), to chaos and severely breach the principle of mutual trust. The judicial authorities of the Member State issuing the warrant cannot be required to take into account premises for issuing the warrant in view of regulations of the Member State of execution.

IV. Recognition of the fact that the purpose of surrendering the requested person to the territory of the Member State issuing the European arrest warrant, is among those premises, which are subject to control of the judicial authorities of the Member State of execution, transfers deliberations to the field involving the first of the legal issues presented to the Supreme Court for settlement by the Court of Appeal in Warsaw. In expressing an opinion on the issue, it is necessary to account for the

assumptions made and agree that it is not a questions of provisions of Polish law nor the Council Framework Decision (which pursuant Article 34 par. 2b of the European Union Treaty is not subject to direct application), but provisions of Belgian law, interpreted in view of the Framework Decision provisions that create the relevant perspective for assessment. Nevertheless, it must be acknowledged that in view of principal convergence of regulations referring to the issue, agreement on interpretation is of a universal character.

Prior to further deliberations, it is necessary to initially resolve whether the Supreme Court is authorised, pursuant to Article 441 of Criminal Code Proceedings, to interpret framework decisions and foreign law.

It must be admitted that the grammatical interpretation of these provisions should point to the conclusion that the normative act, subject to interpretation of the Supreme Court pursuant to Article 441 of Criminal Code Proceedings, is solely the normative act termed “Act”, thus such as is passed by the Polish Parliament pursuant to Article 118-122 of the Constitution of the Republic of Poland. According to the Supreme Court, the wording of the provision of Article 441 § 1 of Criminal Code Proceedings should be interpreted functionally, which points to the conclusion that the subject of the legal question can refer not only to provisions of an Act but also Ordinance, ratified international agreement, local regulations and even foreign law, should the court of appeal be obliged to – in relation to a situation in proceedings regarding a given case – and on reviewing a repeal measure and if a legal issue arises requiring fundamental interpretation of a provision/ provisions of that normative act.

The function of the provisions of Article 441 § 1 of Criminal Code Proceedings is assurance of uniform decisions on criminal cases in the sphere of interpreting legislation. Courts of appeal examining appeals are faced repeatedly with the necessity to interpret Act provisions as well as other normative acts stipulated by the Polish constitution system and thus in view of the development of international relations, also treaties ratified by Poland, and normative acts in the constitution systems of other States. Legal issues, giving rise to serious doubts and requiring interpretation of normative acts may arise not only in case of a normative act called “Act” but also

other normative acts. Ordinances are in fact developed on the grounds of special authorisations included in Acts, include generally binding norms and serve the purpose of correct Act enforcement supplementing the statutory regulation and providing detailed specification for proceeding by Act addressee. On the other hand, local regulations are the source of commonly binding law of the Republic of Poland in the area of the local authorities passing the regulations. International agreements, on publication, become part of the domestic legal order and apply directly provided their application is not pending on the issue of an Act.

Both judicial decisions of the Supreme Court (see e.g. substantiation of resolutions: of 30 November 1986, VI KZP 12/86, OSNKW 1986, z. 12, item 91, of 30 May 1989, VI KZP 4/89, OSNKW 1989, z. 5–6, item 37, of 17 November 1997, I KZP 16/97, OSNKW 1997, z. 11–12, item 95, of 19 February 2003, I KZP 47/02, OSNKW 2003, z. 3–4, item 23, of 20 July 2005, I KZP 18/05, OSNKW 2005, z. 9, item 74) and professional literature (see for example R. A. Stefański: *Instytucja pytań prawnych do Sądu Najwyższego w sprawach karnych*, Kraków 2001, pp. 268-269; J. Bratoszewski: *Działalność uchwałodawcza Sądu Najwyższego. Wybrane problemy* [in:] T. Nowak (Ed.) *Nowe prawo karne procesowe. Zagadnienia wybrane. Księga ku czci Profesora Wiesława Daszkiewicza*, Poznań 1999, p. 187; S. Włodyka: *Przesłanki dopuszczalności pytań prawnych do Sądu Najwyższego*, NP 1971, no 2, p. 176 ; P. Hofmański (Ed.), E. Sadzik, K. Zgryzek: *Kodeks postępowania karnego. Komentarz*, Volume II, Warszawa 2004, p. 652, remarks on acceptance of the Supreme Court resolution referred to above dated 19 February 2003), the opinion on the necessity of functional interpretation of Article 441 § 1 of Criminal Code Proceedings and admissibility of the Supreme Court providing functional interpretations of law regulations in normative acts that are not “Acts” under the Constitution of the Republic of Poland are well grounded.

Also the interpretation of foreign law may be necessary to determine the application of Polish Act provisions (e.g. in assessing the mutuality principle) or to determine whether observance of a given provision of foreign law binds Poland in view of the State’s accession to the European Union and functional aspect of instruments being part of the so called third pillar in scope of their correct

implementation. Difficulties in interpreting provisions of foreign law faced by courts of appeal may turn out to be incomparably more complex than those related to interpreting Polish law. Aware of the latter, professional literature even assumes that interpretation of provisions of Polish law is excluded from the sphere of issues examined based on opinion of experts, whereas the substance of foreign law may involve the opinion of legal experts.

In consequence, it would be irrational to assume that the sole instrument assuring uniform decisions in this sphere of interpreting provisions of foreign law is a cassation complaint. Firstly, many decisions issued with reference to international legal transactions assume the form of decisions and these can be appealed against solely by cassation submitted by subjects specified in Article 521 of Criminal Code Proceedings. Secondly, unification of judicial decisions following the second option can take place at a stage, which in international relations may be definitely late. In criminal proceedings, cassation is not a simple measure of appeal but an extraordinary measure of challenging valid, enforceable court decisions. The enforcement sometimes bears very drastic effects, difficult to restore, particularly in terms of international legal transactions. Therefore, in this field it is purposeful to avoid possible mistakes in judicial decisions prior to the decision becoming valid for enforcement and its referral for execution. This function can be assumed by the institution for legal issues. It should also be noted that a solution to the difficulties referred to above could not be sought in more frequent application by the Supreme Court of Article 441 § 5 of Criminal Code Proceedings in this type of cases. As acceptance of the case for examination by the Supreme Court is only admissible in case of stating that the court of appeal presented a legal issue, in an authorised manner, pursuant to Article 441 § 1 of Criminal Code Proceedings. It is obvious that a different understanding of the term “Act” is not possible in view of the competence of the Supreme Court to provide a fundamental interpretation pursuant to Article 441 § 1 of Criminal Code Proceedings and in view of competency of the court of appeal to request interpretation pursuant to the above. The prerogative of the Supreme Court is on the grounds of this regulation a derivative of competency of the court of appeal.

It should also be pointed out that in Polish criminal law a deviation from the grammatical interpretation of the term “Act” applies not only to provisions of Article 441 § 1 of Criminal Code Proceedings, but also, for example Article 4 of the Criminal Code. Although the latter refers only to “Acts”, it is generally and consistently assumed that whenever a provision of an Act on crime, even if merely a sub-Act, regulation defining the scope of unlawfulness, also amendment of the latter, it needs to be considered a change of the “Act” (compare e.g. Resolution of the Supreme Court of 27 October 1988, VI KZP 11/88, OSNKW 1988, z. 11-12, item 77 and Supreme Court decisions: of 21 July 1988, OSNKW 1988, z. 11-12, item 79 and of 11 October 2000, III KKN 356/99, OSNPiPr 2001, z. 2, item 1).

The establishment of the above, according to the Supreme Court, opens the option to provide an interpretation of Article 32 § 1 of the Belgian Act of 19 December 2003, in the context of the purpose accompanying the issue of the European arrest warrant. Pursuant to this regulation, a European arrest warrant may be issued when there are grounds to assume that the requested person for criminal prosecution is on the territory of another European Union Member State. If we assume that proceedings against a minor governed by the Act of 8 April 1965 on youth protection, do not qualify as non criminal proceedings, the issue to be ascertained is whether the issue of the European arrest warrant in a situation when criminal prosecution is possible after handing the case to the prosecutor pursuant to Article 38 of the same, takes place "for the purpose of conducting criminal prosecution against the person" pursuant to Article 32 § 1 of the Act of 19 December 2003 implementing the European arrest warrant. As the European arrest warrant was issued by the Prosecutor of the Prosecutor's Office of the King's Prosecutor in Brussels, it should be assumed that the author of the warrant gave a positive answer to this question. In the opinion of the Supreme Court this is a accurate interpretation. There is no doubt that juvenile court proceedings may result in handing the case over to the prosecutor, which will mean realisation of the purpose for which the warrant was issued. Neither the contents of Article 32 § 1 of the Belgian Act of 19 December 2003, nor the provisions of the Framework Decision of 13 June 2002, indicate that at the time of issuing the European arrest warrant criminal proceedings must be already in progress. Formulation of such a requirement would in fact be – in

view of the diversified solutions adopted in domestic law of European Union Member States – pointless. Nonetheless, the initiated procedure for warrant issue, under which a decision was made to deprive the requested person of liberty, is pending on it leading to criminal proceedings. The purpose must always be criminal prosecution and not any other proceedings even if it includes elements of repression.

The ascertainment of the purpose for surrender of the requested person, on the territory of the Member State issuing the European arrest warrant, must be made with regard to a concrete case and not *in abstracto*. Thus, there is no coincidence that the letter of the Prosecutor's Office of the King's Prosecutor in Brussels to the District Court in Warsaw gives concrete circumstances in view of which it is quite probable that on surrendering Adam G. to the territory of the Kingdom of Belgium his case will be handed to the prosecutor and he will be held criminally responsible and in consequence will face criminal prosecution applicable to adults. Such are the circumstances of the nature of the offence as well as the fact of earlier penalty. These circumstances must be taken into account by the Polish judicial authorities examining the premises underlying the check assessment of premises underlying the issue of the European arrest warrant by the Prosecutor's Office of the King's Prosecutor in Brussels.

Indication of the necessity to assess the purpose of issuing the European arrest warrant does not mean that in order to express a relevant opinion the Supreme Court surpassed the legal framework stipulated by Article 441 § 1 of Criminal Code Proceedings. Presumably a different point of view induced the Prosecutor of the National Prosecutor's Office, who presenting his standing on the case in writing, postulated refusal of the Supreme Court to pass a resolution on the first of the issues presented by the Court of Appeal in Warsaw. However, there is a difference in assessing whether premises pending issue of the European arrest warrant are satisfied *in concreto* and in assessing whether the judicial authorities relevant to execute the European arrest warrant are obliged to account for not only normative conditions accompanying issue of the European arrest warrant, but also factual circumstances of issue thereof.

V. The assessment of premises providing grounds for issue of the European arrest warrant must be effected taking into account the law binding the Member State of issue thereof and provisions of the Council Framework Decision of 13 June 2002. However, the question remains what role it assumes in the Polish law system Article 607k § 1 of Criminal Code Proceedings, which points to criminal prosecution of the requested person as the purpose to which the surrender to the territory of another European Union Member State can be effected. It is obvious that it cannot be deemed as a formulae construing premises for issue of the European arrest warrant by the Polish judicial authorities primarily because it is included in Chapter 65b of Criminal Code Proceedings on request of a European Union Member State to surrender a requested person on the grounds of the European arrest warrant, and secondly, because this function is assured by Article 607a of Criminal Code Proceedings. Premises for issuing the European arrest warrant are always formulated by the Member State issuing the warrant and compliance thereto must be viewed from this perspective. Thus, there is no option but to recognise that reference to the purpose of surrender in Article 607k § 1 of Criminal Code Proceedings means that the legislator, admitted the inclusion of a reservation, in surrendering the requested person to the territory of another European Union Member State, that the surrender is executed for the purpose of conducting criminal prosecution against the person. Should however it appear that this purpose shall not be achieved, the person would have to be released, or – as in the case examined – re-surrendered to the territory of the Republic of Poland. The principle of *aut dedere aut iudicare*, must be applied, which means that Polish judicial authorities have the duty to adjudge the person that cannot be surrendered to the jurisdiction of the State requesting surrender thereof.

Summarising: the wording „for the purpose of conducting (...) criminal prosecution” must be broadly interpreted in the sense that this purpose is effected when one of the possible procedures to which the requested person is subjected in the Member State issuing the warrant is criminal prosecution. „The purpose of conducting criminal prosecution” in terms of Article 607k § 1 of Criminal Code Proceedings must be understood strictly in these terms to the effect that this provision allows for

formulation of a reservation that surrender of requested person takes place solely provided the proceedings to be finally undertaken against the requested person is criminal prosecution.

The statement that provisions of Article 607k § 1 of Criminal Code Proceedings include consent to surrender a requested person provided the purpose indicated therein is achieved, gives rise to a typical question on guaranties that the surrendered person is actually re-surrendered to the territory of the Republic of Poland in case criminal prosecution is not progressed. Such guaranties stem explicitly and obviously from the principle of mutual trust between European Union Member States and the rules governing international cooperation on criminal cases. It is obvious that if the Juvenile Court in Brussels does not hand the case of Adam G. to the prosecutor, and in effect to a court for adults, pursuant to Article 38 of the Belgian Youth Protection Act of 8 April 1965, it cannot conduct other proceedings against him, should the person requested be surrendered to the territory of Belgium “for the purpose of conducting against him criminal prosecution”. The consequence must be the re-surrender of the requested person to the territory of the Republic of Poland, and only here the person shall be held responsible for the crime committed.