

Chapter 65a

Request to a European Union Member State for extraditing a prosecuted person pursuant to the European Arrest Warrant

Article 607a. In the event of suspicion a person prosecuted for an offence subject to jurisdiction of Polish criminal courts may be staying in the territory of a European Union Member State, a regional court having territorial jurisdiction, on a motion from the state prosecutor, in judicial and execution proceedings - carried ex officio or upon a motion from the competent regional court, may issue a European Arrest Warrant, hereinafter referred to as the "warrant".

Article 607b. Issuance of the warrant is inadmissible:

- 1) in connection with the criminal proceedings conducted against the prosecuted person for an offence subject to the penalty of deprivation of liberty up to one year,
- 2) to execute the penalty of deprivation of liberty sentencing for up to 4 months or another measure consisting in deprivation of liberty for a period not exceeding 4 months.

Article 607c. § 1. The warrant shall contain:

- 1) marking of the issuing court, together with its address, the telephone number, fax, and an electronic mail address,
- 2) a date and place of the warrant issuance,
- 3) particulars determining the identity and citizenship of the prosecuted person,
- 4) reference file number, type and contents of a valid and final decision or a court decision subject to execution further to which the warrant has been issued,
- 5) description and legal classification of the act,
- 6) maximum statutory limit of the penalty of deprivation of liberty for an offence under pending proceedings or the limit of the validly decided penalty of deprivation of liberty or another measure consisting in deprivation of liberty,
- 7) concise description of facts of the case,
- 8) indication of consequences of the act not included in statutory qualities of a prohibited act.

§ 2. The warrant shall be translated into an official language of the receiving state.

§ 3. The Minister of Justice shall set forth, by ordinance, a specimen of the warrant, having regard to the necessity of providing the European Union Member State, to which it is directed, data necessary to take a correct decision on extradition of the prosecuted person.

Article 607d. § 1. If there is suspicion that the prosecuted person may be staying in the territory of a European Union Member State, and her place of stay is not known, the state prosecutor, and under judicial and execution proceedings the regional court that has issued the warrant shall send its copy to the central Police unit co-operating with Interpol with a motion to commence international search.

§ 2. If the place of stay of the prosecuted person is known or has been determined as a result of search referred to in § 1, the state prosecutor, and under judicial and execution proceedings, the regional court that has issued the warrant, shall transmit it directly to a judicial authority of the warrant executing state; a copy of the warrant shall be transmitted to the Minister of Justice.

§ 3. The provision § 2 shall be accordingly applied in the event whereby the warrant executing state has requested presentation of additional information or documents.

§ 4. Transmission of the warrant and all related information and documents may also be carried with the use of equipment used for automatic data transmission, in a manner that allows authentication of such documents.

Article 607e. § 1. A person extradited as a result of warrant execution may not be prosecuted for offences other than those that has been the basis for extradition, or penalties of deprivation of liberty for such offences or other measures consisting in deprivation of liberty may not be executed against her either.

§ 2. The court that has taken a valid decision in the case may order execution of the penalty only for those offences that have been the basis for extradition of the prosecuted person. The state prosecutor and the prosecuted person shall have the right to participate in the court session. The provision of Article 451 shall be applied accordingly.

§ 3. The provision of § 1 shall not be applied, if:

- 1) a warrant executing state has made a statement on admissibility of prosecution or execution of the penalty of deprivation of liberty or other measures consisting in deprivation of liberty for all acts committed before extradition, unless the judicial authority of such state has decided otherwise in a decision on extradition,
- 2) despite such possibility, an extradited person has not left the territory of the Republic of Poland within 45 days as from the date when the proceedings have been validly concluded, or, after leaving the territory of the Republic of Poland has not returned there,
- 3) a penalty of deprivation of liberty has not been decided or another measure consisting in deprivation of liberty,
- 4) the criminal proceedings are not related to application of a measure consisting in deprivation of liberty against the prosecuted person,
- 5) an act committed by the prosecuted person is subject to a penalty or a measure not consisting in deprivation of liberty,

6) the prosecuted person has expressed her consent to extradition and has waived the right specified in § 1,

7) following her extradition, the prosecuted person has made a statement before the court competent to hear the case about waiving her right specified in § 1 with regard to acts committed before extradition,

8) (444) a judicial authority of the warrant executing state that has extradited the prosecuted person, on the motion of the court competent to issue the warrant, has expressed its consent to prosecution or execution of the penalty of deprivation of liberty or other measures consisting in deprivation of liberty for offences specified in subsection 1.

§ 4. The motion referred to in § 3 subsection 8 shall contain the information enumerated in Article 607c § 1. The provision of Article 607c § 2 shall be applied accordingly.

Article 607f. Further to extradition, the period of actual deprivation of liberty in the warrant executing state shall be credited to the awarded or executed penalty of deprivation of liberty.

Art. 607g. After valid conclusion of the criminal proceedings against the prosecuted person or in execution of the penalty of deprivation of liberty against her or another measure consisting in deprivation of liberty, the court competent to hear the case shall send a copy of the decision or notice on execution of the penalty or another measure to the justice administration authority of the warrant executing state.

Article 607h. § 1. The competent court or prosecutor may request the judicial authority of the warrant executing state to seize and transfer items directly from the offence, items that have been used or have been intended for committing the offence, or those that might serve as evidence in the case of items, correspondence, parcels, lists of telecommunication connections or other transmissions of information or data stored in an information technology system or on a carrier, including correspondence sent by electronic mail.

§ 2. Seizure and extradition of evidence and items referred to in § 1 may also be requested, when execution of the warrant is not possible because of death or escape of the prosecuted person.

§ 3. Extradited items referred to in § 1 shall be returned to the warrant executing state, if at their extradition their return has been warranted or when they are subject to return to the injured person or another eligible entity staying in the territory of the warrant executing state.

§ 4. The provisions of Chapter 62a shall be applied accordingly.

Article 607i. § 1. The prosecuted person, who, as a result of extradition, is in the territory of the Republic of Poland, shall be subject to further extradition without consent of the warrant executing state, in connection with offences committed prior to extradition, only if:

1) despite such possibility, has not left the territory of the Republic of Poland within 45 days as from the date when the proceedings have been validly concluded or, after leaving the territory of the Republic of Poland has not returned there,

2) has expressed her consent to extradition to a state other than the warrant executing state,

3) the provision of Article 607e § 3 subsection 2, 6, 7, or 8 is applied to her.

§ 2. Further extradition of the prosecuted person who, as a result of extradition, is in the territory of the Republic of Poland, shall require consent of the competent judicial authority of the warrant executing state that has extradited such person. A motion of the competent regional court on consent to further extradition shall contain information enumerated in Article 607c § 1. The provision of Article 607c § 2 shall be applied accordingly.

§ 3. Extradition of a prosecuted person, who, as a result of extradition, is in the territory of the Republic of Poland, shall require consent of the competent agency of the warrant executing state that has extradited such person.

Article 607j. § 1. If the warrant executing state has extradited a prosecuted person, on condition that execution of the penalty of deprivation of liberty, or another measure consisting in deprivation of liberty shall be done in such state, execution proceedings shall not be instituted.

§ 2. In the event referred to in § 1, the court competent to hear the case, immediately after the decision has become valid and final, shall issue an order on extradition of the convicted person to a relevant European Union Member State for execution of the awarded penalty or another measure consisting in deprivation of liberty. A copy of the order together with a copy of the decision subject to execution shall be transmitted to the competent judicial authority of the warrant executing state.

Chapter 65b

Request of a European Union Member State for extraditing a prosecuted person pursuant to the European Arrest Warrant

Article 607k. § 1. Extradition of a person sought under the European Arrest Warrant, hereinafter referred to as the “European warrant”, from the territory of the Republic of Poland shall be made to conduct criminal proceedings or execute the awarded penalty of deprivation of liberty or another measure consisting in deprivation of liberty against her in the territory of another European Union Member State.

§ 2. In the event of receiving a European Warrant the state prosecutor shall interrogate a person such warrant concerns informing her about the contents of the European Warrant and the possibility of expressing consent to extradition or consent to non-application of the provision of Article 607e § 1, after which he shall bring the case to the competent regional court having territorial jurisdiction.

§ 3. Upon a motion from the state prosecutor, the regional court may applied preliminary detention, prescribing its time-limit for the period necessary for extradition of the prosecuted person. The total period of application of preliminary detention may not exceed 100 days. Existence of a valid and final sentencing judgement issued in another European Union Member State or another decision serving

as the basis for deprivation of liberty of the prosecuted person shall be an independent basis for applying preliminary detention.

§ 3a. Before the European Warrant has been filed, the court may apply preliminary detention against the prosecuted person for a period not longer than 7 days, if this is so requested by the competent judicial authority that has issued the European Warrant, ensuring that a valid and final sentencing judgement has been passed on the prosecuted person or another decision has been issued serving as the basis for deprivation of liberty.

§ 4. If separate regulations of Polish law provide that prosecuting a person against whom the European Warrant has been issued shall depend on permission of the competent authority, before the case is brought to court the provision of Article 13 shall be applied.

§ 5. If simultaneously with the issuance of the European Warrant a European Union Member State has requested interrogation of the prosecuted person, such person shall have to be interrogated before the warrant is examined. Interrogation shall be carried in the presence of a person indicated in the European Warrant. The provision of Article 588 § 4 shall be applied accordingly.

Article 607l. § 1. The court shall take a decision on extradition and preliminary detention in a session that the prosecutor and defence counsel have the right to participate in.

§ 2. If the prosecuted person so wishes, the court shall take from her a statement of consent to extradition or consent to non-application of the provision of Article 607e § 1 filed with the record. The statement may not be withdrawn, about which the prosecuted person shall need to be instructed.

§ 3. The court order on extradition shall be subject to an interlocutory appeal. The interlocutory appeal shall be filed within 3 days as from the announcement of the order, and if the prosecuted person has been deprived of liberty and has not been brought to the court session, as from the date of its delivery. Article 252 shall be applied accordingly.

Article 607m. § 1. The order on extradition shall be issued by the district court within 40 days as from the date of apprehension of the prosecuted person. If the prosecuted person has made a statement referred to in Article 607l § 2, this time-limit shall be 3 days and run from the date of the statement.

§ 1a. The proceedings in extradition shall be validly completed within 60 days as from the date of apprehension of the prosecuted person or 10 days as from the date of her statement referred to in Article 607l § 2.

§ 2. In particularly justified cases, when time-limits specified in § 1a may not be kept, the proceedings in extradition shall be validly completed within another 30 days as from the expiry of those time-limits. The judicial authority that has issued the European Warrant shall need to be informed about delay giving the reason therefor.

§ 3. In case specified in Article 607k § 4, time-limits referred to in § 1 and 2, shall run from obtaining permission for prosecution. If the run of such time-limits has already commenced, it shall be suspended until permission has been obtained.

Article 607n. § 1. The prosecuted person against whom a valid and final order on extradition has been issued shall be extradited to the competent judicial authority of the European Warrant issuing state not later than within 10 days from the order becoming valid and final.

§ 2. If extradition of the prosecuted person within the time-limit specified in § 1 is not possible as a result of force majeure or threat to life or safety of such person, the prosecuted person referred to in § 1 shall be extradited to the competent judicial authority of the European Warrant issuing state within 10 days from the date of the newly determined extradition time-limit.

§ 3. If the European Warrant issuing state does not receive a person who is subject to extradition at the time-limits referred to in § 1 or 2, immediate release of such person shall be ordered, if such person is not deprived of liberty in another case.

Article 607o. § 1. If there are criminal proceedings conducted against the prosecuted person in the homeland into an act other than the act indicated in the European Warrant or such person is to serve the penalty of deprivation of liberty for such act in the homeland, by issuing an order on extradition the court may postpone its execution until the criminal proceedings have been completed in the homeland or until the penalty of deprivation of liberty has been completed.

§ 2. In a situation specified in § 1 the court having notified the agency that has issued the European Warrant about its occurrence, may, upon such agency's motion, temporarily extradite the prosecuted person under the terms specified in an agreement concluded with such agency. Such agreement shall be made in writing and specify the terms of extradition, in particular including the date of return extradition of the prosecuted person.

Article 607p. § 1. Execution of the European Warrant shall be refused, if:

- 1) an offence that the European Warrant concerns, in case of jurisdiction of Polish criminal courts, is subject to pardon under amnesty,
- 2) a valid and final decision on the same acts has been issued against the prosecuted person in another state and, in the event of sentencing for the same acts, the prosecuted person is serving or has served a penalty, or the penalty may not be executed according to law of the state in which a sentence has been pronounced,
- 3) a valid and final decision has been issued against the prosecuted person on extradition to another European Union Member State,
- 4) the person, to whom the European Warrant applies, is not called to penal responsibility under Polish law for acts that are the basis for issuance of the European Warrant due to such person's age,
- 5) that would violate freedoms and rights of man and citizen,
- 6) the warrant has been issued in connection with an offence committed without the use of violence due to political reasons.

§ 2. If the European Warrant has been issued against the prosecuted person who is a Polish citizen, execution of the warrant may be subject to condition that the act to which the European Warrant

applies has not been committed in the territory of the Republic of Poland or on board of a Polish vessel or aircraft and constituted an offence under law of the Republic of Poland or would constitute an offence under law of the Republic of Poland if committed in the territory of the Republic of Poland, both at the time of its commitment, and at the moment of reception of the European Warrant.

Article 607r. § 1. Execution of the European Warrant may be refused, if:

- 1) an offence being the basis for issuance of the European Warrant, other than enumerated in Article 607w, is not an offence under Polish law,
- 2) in the Republic of Poland there are criminal proceedings conducted against the prosecuted person, to whom the European Warrant applies, into an offence that is the basis for the European Warrant,
- 3) a valid and final decision on refusal to institute proceedings, on discontinuance of the proceedings, or another decision on completing the proceedings into the case has been issued against the prosecuted person in connection with an act being the basis for issuance of the European Warrant,
- 4) under Polish law a prescribed statute of limitations to prosecute or execute the penalty has lapsed, and offence it applies have been subject to jurisdiction of Polish courts,
- 5) the European Warrant applies to offences that under Polish law have been committed, in whole or in part, in the territory of the Republic of Poland, and also on board of a Polish vessel or aircraft,
- 6) for a prohibited act that the European Warrant applies to, a penalty of life imprisonment or another measure consisting in deprivation of liberty without a possibility of seeking its shortening may be awarded in the European Warrant issuing state.

§ 2. The provision of § 1 subsection 1 shall not be applied, if the act is not an offence due to lack of or different regulations under Polish law governing fees, taxes, customs duties, or rules applicable to foreign exchange.

Article 607s. § 1. The European Warrant issued to execute the penalty of deprivation of liberty or a measure consisting in deprivation of liberty against the prosecuted person who is a Polish citizen or has been granted asylum in the Republic of Poland shall not be executed, unless such person expresses consent to extradition.

§ 2. Execution of the European Warrant may also be refused, if it has been issued for the purpose referred to in § 1, and the prosecuted person has the place of residence or permanently stays in the territory of the Republic of Poland.

§ 3. By refusing extradition due to reasons specified in § 1 or 2, the court shall decide on execution of the penalty or measure that have been decided by the judicial authority of the European Warrant issuing state.

§ 4. In the order referred to in § 3, the court shall determine legal classification of the act under Polish law. The court is bound by the decided penalty. If the European Warrant has not been appended with documents or information necessary for the execution of penalty in the territory of the Republic of Poland, the court shall postpone its session and shall request the competent agency of the European Warrant issuing state to send such documents or information.

§ 5. The penalty shall be executed in accordance with the regulations of Polish law.

Article 607t. § 1. If the European Warrant has been issued to prosecute a person who is a Polish citizen or has been granted asylum in the Republic of Poland, extradition may be executed on condition that such person shall be returned to the territory of the Republic of Poland after the proceedings in the European Warrant issuing state have been validly concluded.

§ 2. In the event the person referred to in § 1 has been sentenced to the penalty of deprivation of liberty or another measure consisting in deprivation of liberty has been awarded, the provisions of Articles 607s § 3-5 shall be applied accordingly.

Article 607u. If the European Warrant has been issued to execute the penalty or preventive measure, decided by default, and the prosecuted person has not been summoned to participate in the proceedings or notified about the date and place of the trial or session otherwise, extradition of such person may only be carried when an agency that has issued the European Warrant ensures such person about a possibility of submitting a motion in the European Warrant issuing state to conduct new court proceedings in the same case with such person present.

Article 607w. If the European Warrant applies to a person that is not a Polish citizen, circumstances that the act is not an offence under Polish law, is not an obstacle to execution of the European Warrant, provided it concerns an act that in the state of its issuance is subject to the penalty of deprivation of liberty of a minimum 3 years at least, or an act for which another measure involving deprivation of liberty of the similar sentence at least may be given that is an offence:

- 1) participation in an organised crime group or criminal bond with a purpose of committing offences,
- 2) an offence qualified as terrorism,
- 3) human trafficking,
- 4) against sexual freedom or morals to the detriment of a juvenile,
- 5) illegal manufacturing, processing, smuggling of intoxicants, precursors, substitutes thereof, or psychotropic substances or their trading,
- 6) illegal trading in weapons, munitions, explosives, or radioactive materials,
- 7) bribery and paid patronage,
- 8) fraud,
- 9) introduction into financial circulation of property values that are derived from illegal or undisclosed sources,

- 10) forging of and trading in forged money or other legal tenders,
- 11) against protection of data collected, stored, processed, or transmitted in an information technology system,
- 12) against natural environment, including illegal trading in endangered species of fauna and flora,
- 13) aiding in illegal crossing of the border or in illegal stay,
- 14) homicide,
- 15) causing severe detriment to health,
- 16) illegal trading in human organs and tissues,
- 17) illegal deprivation of human being of liberty,
- 18) abduction of human being for ransom,
- 19) seizing or holding a hostage,
- 20) committed because of national, ethnical, racial, religious reasons, or because of non-denominationality,
- 21) robbery with the use of firearms or threat of its use,
- 22) extortion with violence with the use of firearms or threat of its use,
- 23) illegal trading in cultural heritage items,
- 24) misappropriation of other person's property,
- 25) counterfeiting and trading in counterfeited products,
- 26) forging and trading in forged documents,
- 27) illegal trading in hormones or similar substances,
- 28) trading in stolen mechanical vehicles,
- 29) rape,
- 30) arson,
- 31) within the competence of the International Criminal Court,
- 32) kidnapping a vessel or aircraft,
- 33) sabotage.

Article 607wa. § 1. The competent court or state prosecutor, on a motion from the judicial authority of the European Warrant issuing state, shall seize and transfer items directly from the offence, that

have been used or have been intended for committing the offence, or those that might serve as evidence in the case of items, correspondence, parcels, lists of telecommunication connections or other transmissions of information or data stored in an information technology system or on a carrier, including correspondence sent by electronic mail.

§ 2. Seizure and extradition of evidence and items referred to in § 1 shall be carried also when execution of the European Warrant is not possible because of death or escape of the prosecuted person.

§ 3. At extradition of items referred to in § 1 their return may be warranted, in particular when they are subject to return to the injured person or another eligible entity staying in the territory of the Republic of Poland.

§ 4. The provisions of Chapter 62b shall be applied accordingly.

Art. 607x. § 1. If, prior to the issuance of an order on extradition in the first instance, a European Warrant has been received for the same person, issued by a judicial authority of another European Union Member State, the court shall examine both European Warrants jointly. By deciding on extradition of the prosecuted person to a given state, the court shall have regard to circumstances of each of the cases, the importance of an offence and the place of its commitment, the sequence in which the European Warrants have been issued, and their purposes.

§ 2. If another European Warrant concerning the same person has been received after an order on the previous European Warrant has been issued in the first instance, the court shall postpone examining of another European Warrant until such order has become valid and final.

§ 3. In the event the appellate court has reversed the order referred to in § 2, and transmitted the European Warrant to be examined again in the first instance, the provisions of § 1 shall be applied accordingly.

Art. 607y. § 1. If a European Warrant is received against the same prosecuted person or a motion for extradition to a foreign state, having examined the European Warrant the court shall decide on admissibility of its execution and shall suspend the proceedings and notify the Minister of Justice about the contents of its decision.

§ 2. If the Minister of Justice has decided on extraditing the person the European Warrant applies to a foreign state, the proceedings in the European Warrant shall be discontinued. In the event of extradition refusal, the court shall conduct again the suspended proceedings and issue an order on extradition.

Art. 607z. § 1. If information transmitted by the European Warrant issuing state is not sufficient to take a decision on extradition of the prosecuted person, the court shall call on the judicial authority that has issued the European Warrant to supplemented by the prescribed time.

§ 2. In the event of failure to comply with the time-limit referred to in § 1, the European Warrant shall be examined on the basis of previously received information.

Art. 607za. § 1. A motion of the competent judicial authority of the European Warrant issuing state for consent to prosecute or execute penalties of deprivation of liberty or measures consisting in

deprivation of liberty for acts committed before extradition or consent to further extradition of the prosecuted person shall be heard by the district court that has decided on extradition. Provisions of Articles 607b, 607p, 607r, 607s § 1 and 2, and Article 607z shall be applied accordingly.

§ 2. The motion referred to in § 1 shall be heard by the court within 30 days as from receiving it.

Art. 607zb. § 1. Upon a motion of the European Warrant executing state the Minister of Justice shall grant permission to transportation the person prosecuted under the European Warrant through the territory of the Republic of Poland.

§ 2. The motion for permission to transportation referred to in § 1 shall contain:

- 1) marking of the requesting agency,
- 2) date and place of the European Warrant issuance,
- 3) particulars determining the identity and citizenship of the prosecuted person,
- 4) description and legal classification of the act,
- 5) concise description of facts of the case.

§ 3. If the prosecuted person is a Polish citizen or has been granted asylum in the Republic of Poland, permission referred to in § 1, may be issued on condition that such person, following completion of the proceedings, shall be extradited for execution of the penalty of deprivation of liberty or a measure consisting in deprivation of liberty in the territory of the Republic of Poland.

§ 4. In the event of transportation by air without scheduled landing, it shall suffice to notify the Minister of Justice about transportation of the prosecuted person over the territory of the Republic of Poland. If, however, there is unpredicted landing, the European Warrant executing state shall immediately provide the data referred to in § 2; the provision of § 3 shall be applied accordingly.

Art. 607zc. If the court to which the European Warrant has been directed is not competent for its institution, it shall transmit it to the competent judicial authority and shall notify about it the judicial authority that has issued such warrant.