



## BEYOND SURRENDER

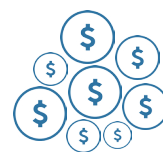
### LETTERS THAT DID NOT REACH THE ADDRESSEE. SURRENDER AFTER 6.5 YEARS AFTER ISSUING AN EAW

#### THE STORY OF JOANNA



Ms J. comes to the attention of the justice system when her partner, who faces a difficult financial situation and constant refusals from banks to provide him with financing, asks an acquaintance to take a loan from a bank. Ms J.'s partner promises that he will pay back the loan and provides his acquaintance with a falsified certificate of employment. He asks Ms J. to issue this certificate.

The situation repeats on a couple of occasions. Ms J. herself also takes one loan. Despite new loans, financial problems of Ms J.'s partner do not disappear. Eventually, one of the bank employees becomes suspicious and calls the police. The police arrests Ms. J.'s partner on 27 August 2007 when he comes to the bank to take another loan. The man states that employment certificates were issued by Ms. J.



The police hear Ms. J. as a witness in the case. Without the lawyer present, she admits that at the request of her partner she issued a couple of certificates and took a loan. Subsequently, Ms. J. hears the charges. She is informed about the rights and duties in a standard form. A piece of paper that she receives is full of articles which mean nothing to her.

Ms. J.'s trial proceeds very efficiently. She files a guilty plea and wants to serve the sanction voluntarily. The sentence is not high – 2 years of imprisonment suspended for 5 years. She also has to pay a fine of 2000 PLN.

She pays the fine with some difficulties. The court nevertheless begins the procedure to execute her suspended sentence. It turns out that a couple of months earlier Joanna was sentenced for drunk driving to limitation of liberty.



The court sent a notice of the initiation of proceedings concerning execution of the sanction to the address previously provided by Ms. J. However, the postman does not encounter anyone at home. The notice that he leaves is found by Ms. J.'s father, an elderly man. He forgets about the notice and tells nothing to Ms. J. After two weeks, the notice is deemed delivered.

During the hearing concerning the execution of the sanctions, the court contends that Ms. J. blatantly violated the legal order. The court, however, sends the decision to Ms. J.'s old address.

Ms. J. files a motions to restore the deadline for filing an appeal against the decision. She explains to the court that she had to leave Poland and was not aware that she had to inform the court about long-term departures abroad. Her father forgot to tell her about the notice he received. When she learned about the decision, it was already too late. However, Ms. J. fails to attach her appeal to the motion for restoration of the deadline, so the motion is never considered.



Ms. J., thus, has to serve 2 years in prison. She appeals to the court. She explains that she will serve the sentence, but she would like to have some time to prepare financially. In Poland, she did not have a job and any means to get by. Now, in England, she is doing well. She explains that in two years she will return to Poland and asks the court to postpone the execution of the sentence until this date.



The court considers her arguments as convincing. It postpones execution of punishment for 6 months. It sends information about its decision to the address indicated by Ms. J. When the time passes, Ms. J. sends another motion to postpone execution of punishment. She explains that she lives in England, has a permanent job, an apartment, and pays the loan she took for her partner.



However, she fails to pay for the motion. The 80 PLN that she is supposed to pay for this motion and which is missing in the court's bank account forces the court to ask Ms. J. to mitigate this formal deficiency. The courts sends a notice to Ms. J.'s father. After two weeks, Ms. J. asks the court to send her all correspondence to the address in England. She argues that this will facilitate communication. The court does not react to this letter. It does not inform Ms. J. that Polish law requires that she establish a proxy in the country for the purpose of delivery of court correspondence.

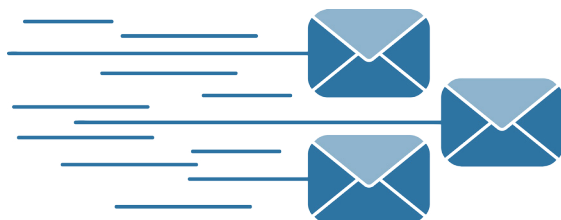


So, the wheels of the justice system, temporarily suspended, begin turning again. Appropriate orders are issued for Ms. J. to appear in prison, to be admitted and, eventually, to be brought by the police to the penitentiary unit. Correspondence is sent to all addresses provided by Ms. J. instead of the address where she actually lives.



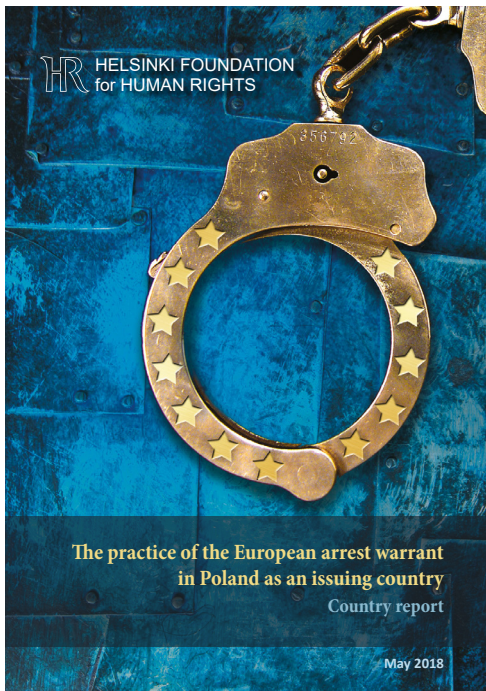
The police in the whole country begin to look for Ms. J., despite the fact that the court knows that she lives abroad.

Eventually, after six and a half years since the judgement in her case became final, the Regional Court issues a European arrest warrant. At that time, Ms. J. has a job, an apartment and a family, a husband and a 2-year-old child. After a year, the British police find Ms. J. She is arrested and placed in detention pending a decision on surrender.



For a year, the correspondence is circulating between Poland and the UK. The latter wants to know whether Ms. J. had sufficient information about the proceedings. The Polish side asserts that everything was perfectly fine.

Ms. J. is surrendered in August 2016, more than a year after arrest. She stays in a Polish prison for 164 days and then is conditionally released. In its decision, the court notes that the attitude of the convicted woman and her behaviour while serving the sentence suggest that the rehabilitation during the period in prison has reached its positive goals.



The idea of a European arrest warrant was effectively combating serious crime. However, the practice shows that huge forces and resources are used under this mechanism to search for people who - like Ms. Joanna - did not complete the formalities or committed minor offenses. You can read more about the effectiveness of the European arrest warrant in the report *The practice of the European arrest warrant in Poland as an issuing country*.

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The publication was created in the framework of the „Beyond Surrender“ project, coordinated by Fair Trails Europe.





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### 5 YEARS FROM THE RULING UNTIL THE SENTENCE IS SERVED

### THE STORY OF WOJCIECH

Wojciech is a drug addict. He has had problems with abusing heroin for years. A couple of times, these problems have resulted in his appearance before the Polish justice system. These were minor theft cases, burglaries. The same was this time.

While working for a courier company, Wojciech stole several laptops and mobile phones. The damage amounted to several thousand zlotys. After his arrest, Wojciech began treatment. He came to the trial with a guardian from an association which helps addicts.

However, the court which heard his case was merciless. It convicted Wojciech to 4 years of imprisonment. It explained that his addiction cannot justify his behaviour; that he is an adult able to make decisions and direct his life. The fact that he started treatment cannot influence the assessment of his acts. According to the court, placing Wojciech in a penitentiary unit will not nullify the results of treatment obtained to date. In its opinion, if the court had to take subsequent treatment as a mitigating circumstance, the majority of accused persons would take it up, hoping to avoid or decrease their liability.

Wojciech's judgment became final a year later. The court of the second instance shared the arguments of defence and lowered the sanction to two years of imprisonment.

After the treatment was over, Wojciech went to work in the UK. At the same time, in Poland, a search was initiated due to the fact that he had not appeared to serve his sentence. After four more years, a EAW was issued. Then, after another year, Wojciech was arrested by the British police. After 5 months spent in England, he returned to Poland. He did not resign from the specialty rule, even though the prosecutor really wanted to get such a declaration. After Mr Y. serves his sentence, he will be able to leave Poland. In order to execute other sentences in his cases, another EAW will be necessary.

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## EUROPEJSKI NAKAZ ARESZTOWANIA W PRAKTYCE

### REHAB, LEGAL WORK, NEW LIFE ... AND EAW

#### THE STORY OF SEBASTIAN

Sebastian, a young man born in 1994, was transferred to Poland for criminal proceedings from the UK in June 2016. The EAW was issued in 2014 and was related to an accusation from 2013. During the proceedings post-surrender, the accused testified that in 2013, at the time of committing criminal acts, he had been addicted to heroin and he had not remembered the details of the crimes committed. He fled Poland to join his family in the UK and, thanks to his mother's help, he went to rehab. He was addicted to drugs since he was 18.

Only after voluntary rehab in the UK and application of the methadone treatment, was he able to recover from his addiction. He found legal employment in the UK, in the construction industry. The transfer to Poland based on the EAW destabilized his life, as he said during the trial in 2016, but he plead guilty. His lawyer requested a voluntary joint sentence of two years of imprisonment conditionally suspended to five years and an obligation to repair the damage.

In December 2016, the accused was convicted to a requested sentence. During the HFHR's study, the man was in the process of repairing the damage done to the victims. Sebastian provided the court with his lawyer's address as his correspondence address, which is why it is highly possible that he is not present in Poland.

Once again the EAW's transfer of the person - here a suspect - raises doubts as to whether it did not violate human rights (e.g. Article 8 ECHR) and whether it was, in fact, proportionate.

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