

## Poland - Court of Appeal in Wroc?aw, 29 December 2004, II Akz 508/04

**Country of Decision:**

Poland

**Country of Applicant:**

Russia

**Date of Decision:**

29-12-2004

**Citation:**

II Akz 508/04

**Court Name:**

Court of Appeal in Wroc?aw

**Keywords:**

Freedom of movement (right to)

Non-refoulement

Refugee Status

Return

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**Relevant Legislative Provisions:**International Law > [1951 Refugee Convention](#) [1] > [Art 1](#) [2]International Law > [1951 Refugee Convention](#) [1] > Art 31.1European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Recital 4](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Recital 6](#) [5]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Recital 7](#) [5]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > Recital 10European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 2](#) [6] > [Art 2 \(c\)](#) [6]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 2](#) [6]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 13](#) [7]

**Headnote:**

This decision upheld the decision of the District Court in J. as regards the legal inadmissibility of extraditing a foreigner. The decision to accord refugee status was taken by a competent French authority and is binding within the territory of Poland, where the foreigner, who is sought by the Russian authorities, was detained. Poland recognises the decisions of other states to accord refugee status to foreigners and grants such foreigners the same degree and scope of legal protection as it would in the case of a foreigner granted protection by a competent Polish authority.

**Facts:**

The citizen of the Russian Federation was accorded refugee status in France. He was detained in Poland because the Russian Federation sought his prosecution and demanded his extradition on the basis of its agreement with Poland. The District Court (first instance) found that it was legally inadmissible to extradite the foreigner. However, the Public Prosecutor lodged an appeal, arguing that the fact that the foreigner had been granted residency rights in France did not prevent his extradition to his country of origin by a state other than the state which had granted him residency rights.

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**Decision & Reasoning:**

The decision of the Court as regards the legal admissibility of extraditing a wanted person must take into account Poland's other commitments under domestic, international, and European law. Article 33(1) of the Geneva Convention regarding the institutions of deportation and expulsion also applies to the institution of extradition. It prohibits the expulsion of a foreigner who has refugee status unless he is deprived of that status.

It is justified to recognise as binding the decisions of authorities in foreign states to accord refugee status because those decisions are based on exactly the same criteria for according refugee status as laid down in the Geneva Convention. It is all the more justified in the case of the decisions of authorities in states which belong, as Poland does, to the European Union.

In connection with his recognised refugee status, the foreigner received a travel document from the French authorities which entitled him to enter all countries with the exception of the Russian Federation and which guaranteed his return to France for the period of the document's validity. The foreigner was therefore entitled to take advantage of this privilege freely, without fear of sanction in the form of expulsion to Russia. Therefore, the extradition of the foreigner to Russia in the event that he travelled to another Member State would demonstrate the ineffectiveness of EU law (*effet utile*).

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**Outcome:**

The extradition of the foreigner to his country of origin, which seeks his prosecution, was found to be legally inadmissible.

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**Observations/Comments:**

This ruling is very important for the notion of a uniform understanding of refugee status within the European Union, which is one of the aims of the Common European Asylum System. Unfortunately, in many cases, Polish courts have not regarded refugee status accorded in another state to be a legal obstacle to extraditing a foreigner pursuant to the provisions of an international agreement on legal assistance (in such cases, however, courts have usually refused extradition on other grounds, such as the risk of infringing rights and freedoms).

**Attachment(s):**

 [II AKz 508\\_04.pdf](#)[9]

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**Other sources cited:**

Article 31(1)(c) of the Treaty on European Union (in the wording prior to the Lisbon Treaty).

**National / Other Legislative Provisions:**

[Poland - Konstytucji Rzeczypospolitej Polskiej \(Constitution of the Republic of Poland\) - Art 91](#) [10]

[Poland - Konstytucji Rzeczypospolitej Polskiej \(Constitution of the Republic of Poland\) - Art 87 § 1](#)

[11]

[Poland - Ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej \(Act on granting protection to foreigners in the territory of the Republic of Poland\)](#) [12]

[Poland - Ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej \(Act on granting protection to foreigners in the territory of the Republic of Poland\) - Art 13 § 1](#) [13]

[Poland - Ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej \(Act on granting protection to foreigners in the territory of the Republic of Poland\) - Art 15](#) [14]

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**Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%202>

[5] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%206>

[6] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>

[7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 13 QD>

[8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2014%20QD>

[9] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/II%20AKz%20508\\_04.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/II%20AKz%20508_04.pdf)

[10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8067>

[11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8066>

[12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4388>

[13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4391>

[14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7390>