

Certified translation from the Polish language

[The source document consists of 4 subsequently numbered pages accompanied with a cover letter. All components of the documents have been stapled together.]

The District Court for Lublin-Zachód in Lublin -/-

The 9th Criminal Division -/-

ul. Krakowskie Przedmieście 76 -/-

20-950 Lublin -/-

Date of dispatch: 28th October 2021 -/-

Case Ref. No. **IX Kp 760/21** -/-

Please include the date and Case Ref. No. in your reply -/-

RP I Ds. 34.2018 -/-

**Mr Tomasz Przeciechowski, Attorney-
at-Law** -/-

Law Office -/-

ul. Chopina 19/1 -/-

20-023 Lublin -/-

SERVICE OF A COPY OF THE DECISION -/-

The District Court for Lublin-Zachód in Lublin, 9th Criminal Division hereby serves you with the enclosed copy of the decision issued on 26/10/2021. -/-

The present decision may not be appealed against. -/-

Clerk of the Court -/-

[Oblong stamp:]

“Magda Krewko

Clerk of the Court”

[Illegible signature]

File Ref. No. IX Kp 760/21 -/-

THE DECISION -/-

26th October 2021 -/-

The District Court for Lublin – Zachód in Lublin, 9th Criminal Division composed of: -/-
Joanna Bis-Banach DCJ - Presiding Judge -/-

Assisted by Magda Krewko, Clerk of the Court – the Minute Clerk -/-

in the presence of Marcin Kołodziejczyk, District Prosecutor delegated to the Regional Prosecution Office -/-

in the case of: Bartosz Kramek suspected of the offences under Article 271 § 3 of the Criminal Code, Article 299 § 1 of the Criminal Code, et al. -/-

having recognised an appeal filed by the suspect's counsels for the defence against the decision issued by the Prosecutor from the District Prosecutor's Office in Lublin on 15th July 2021 on using of a preventive measure in the form of a ban on leaving the country and seizure of the passport. -/-

pursuant to Article 437 § 1 of the Code of Criminal Procedure -/-

resolves to -/-

revoke the contested decision. -/-

The Substantiation -/-

By virtue of his decision dated 15th July 2021 issued in the course of pre-trial proceedings in Case No. PR 1 Ds. 34.2018.S, the Prosecutor of the District Prosecutor's Office in Lublin delegated to the Regional Prosecutor's Office in Lublin applied in the case of Bartosz Kramek, a preventive measure in in the form of a ban on leaving the country and seizure of the passport. In the substantiation of his decision, the Prosecutor indicated that imposing of such measures would be necessary in order to guarantee the proper course of the pre-trial proceedings. He pointed out to the occurrence of a general pre-condition set forth in Article 249 § 1 of the Code of Criminal Procedure, as well as other pre-conditions referred to in Article 258 § 1 & 2 of the Code of Criminal Procedure, arguing that the key reasons for subjecting the suspect to such coercive measures is the gravity of allegations, combined with a

fear that he might attempt to illegally interfere with the course of investigation and the lack of his permanent residence address in Poland. -/-

The above decision was challenged by Radosław Baszuk, the suspect's counsel for the defence. In his appeal he argued that the contested decision violated the rules of the procedure and substantial law, i.e. 1. Article 258 § 4 of the Code of Criminal Procedure – by non-specification of the circumstances which would substantiate the application of such a measure, bearing in mind the application of a preventive measure in the form of a financial surety, 2. Article 258 § 2 of the Code of Criminal Procedure – by application of a preventive measure in the event if the gravity of any potential penalty is not the ground for the application of such measure, but only allows us to make a presumption that using such measure might be necessary to guarantee the proper course of the proceedings, which is not the case in the analysed circumstances. He requested for revision of the challenged decision and lifting of a ban on leaving the country combined with seizure of the passport, or the possible use of personal sureties provided by designated public persons. -/-

Moreover, the decision was also challenged by Tomasz Przeciechowski, the suspect's counsel for the defence who argued that the decision violated the provisions of Article 52 items 1 & 2 of the Constitution of the RP, Article 2 items 2 & 3 of Protocol 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms by depriving the suspect of the choice of his place of residence and stay, and possibility of leaving the country, as well as Article 47 of the Constitution of the RP by applying a repressive restriction on the fundamental right to protect one's private and family life in the form of actual prohibition of maintaining personal contacts with the closest family member, as well as provisions of Article 249 §1 of the Code of Criminal Procedure, Article 258 § 1 point 1 & § 4 of the CCP, Article 258 § 1 point 2 and § 4 of the CCP, Article 258 § 2 of the CCP; and that there was an error in factual findings by determining that serving correspondence directly at the suspect's address in Poland was impossible. The counsel for the defence also reminded to the fact that a tenancy agreement was submitted in the proceedings instituted before the Regional Court, and a mailing address in Poland was indicated; moreover, the Law Office's domicile address was also indicated as the address for the service of process.

The District Court has resolved as follows: -/-

The appeals are well-founded and, as such, should be upheld. -/-

First of all, it needs be specified that the assessment of rationale of the use of preventive measures was made by the District Court in the course of proceedings marked with File Ref.

No. IV Kp 476/21, and then by the Regional Court, in the course of proceedings marked with File Reference No. V Kz 686/21. Regardless of the final assessment of the body of evidence, which will be conducted only at the sentencing stage by the trial court, one has to agree with the standpoint defined in the challenged decision that the collected body of evidence specified in the decision proves that there is a high probability that the suspect has committed the alleged offence. The key objective of applying preventive measures is, pursuant to Article 249 § 1 of the CCP, ensuring the proper course of proceedings. Therefore, in the circumstances of the case it was rightly concluded that the general pre-condition for applying all preventive measures was fulfilled. Moreover, it should be inferred from the substantiation presented by the Regional Court in Lublin, that the Court has analysed the particular grounds for pre-trial detention referred to in Article 258 § 1 & 2 of the CCP. As a consequence, by upholding the District Court's decision on 15th July 2021 did not consider that the conditional application of any preventive measures other than a financial surety would be necessary. -/-

Meanwhile, on 15th July 2021, the Prosecutor issued his decision on the use of preventive measures in the form of a ban on leaving the country and seizure of the passport. We need to agree with the Prosecutor's standpoint on the existence of the prerequisite referred to in Article 249 § 1 of the CCP, as explained hereinabove. On the other hand, we cannot subscribe to the statement that: "considering the current status of the proceedings, it needs be stated that a financial surety may not be sufficient to effectively prevent the suspect from attempting to interfere with the course of proceedings". As a matter of fact, the challenged decision can be interpreted as an attempt to reverse the Regional Court's judgment, even though the factual and legal circumstances of the case have not changed ever since the date of issuance of the said decision. The existing risk of imposition of a severe penalty (i.e. Article 258 § 2 of the Code of Criminal Procedure) has not changed, either. The financial surety has been paid, the suspect makes his presence whenever summoned by law enforcement authorities, has appointed his counsels for defence, and indicated an address for the service of process within the territory of Poland. Moreover, he stays within the borders of the EU. Obviously, the suspect does not have his permanent address and registered domicile in Poland, but the aforementioned patterns of behaviour minimise the fears referred to in Article 258 § 1 & 2 of the Code of Criminal Procedure. Additionally, it should be emphasised that the Public Prosecutor has not specified the provision of Article 258 § 1 of CCP as the legal basis of his decision, but argues in the substantiation thereof that there existence exist certain pre-conditions based on such provision. Thus, the legal basis of the decision does not correspond

to the rationale thereof, which is contrary to the provision of Article 94 § 1 point 4 of the CCP. -/-

Moreover, in the Court's view, the impossibility of serving the suspect with correspondence at a domestic address referred to by the Prosecutor, which might render him unable to immediately make his presence whenever summoned by law enforcement authorities, does not affect the rationale of application of a preventive measure. These circumstances were known to the Regional Court which did not apply such preventive measure. We should also keep in mind the content of Article 138 of the Code of Criminal Procedure which states that a party non-residing in the country or any other EU member state must appoint his or her agent for the service of process either domestically, or within any other EU member state. Moreover, this provision allows for the service of process to be effected at any known address in any other EU member state. Pursuant to this provision, the party is not obliged to specify his or her domestic address, but rather an agent for the service of process i.e. a natural person or institution to receive the service of process on the party's behalf at its address. Therefore, the notices and summons may be served in the manner set forth in Article 132 § 3 of the CCP or Article 137 of the CCP. -/-

Moreover, one must agree with the counsel of the defence who argued that the Prosecutor's claim that the fact that the suspect resided within the territory of Belgium might make it easier for him to flee from the European Union, in particular, taking into account his links to Petro Kozlovsky, was only a non-substantiated conjecture. It should be emphasised, that the investigation has been pending for some time already (3 years) and the suspect makes his presence whenever summoned by law enforcement agencies. On 12th August he was interrogated as a suspect. He also appeared at a trial held in the present case. -/-

Reassuring, in the Court's view, the suspect's procedural status has not changed since the date of issuance of the decision of 15th July 2021. No irregularities of the suspect's conduct or attempts to disrupt the course of proceedings have been reported. Therefore, the hitherto preventive measure in the form of a financial surety has effectively ensured the proper course of the proceedings, and should be deemed as sufficient for the time being. -/-

In reference to an application for discontinuance of the proceedings which was filed by the counsels for the defence, as a result of the issuance of another Prosecutor's decision, it needs be stated, that in the Court's view, the decision of 30th August 2021 despite the fact that the phrase "is revising" has been used in its operative part, is in fact as separate decision on the application of preventive measures, and in the legal substantiation thereof the Prosecutor does

not refer to the provisions of Article 253 § 1 of the CCP and presents a slightly different line of argument. -/-

In consideration of the above, the Court has resolved as specified in the operative part of the present decision. -/-

[Round official seal with the national emblem of the Republic of Poland and the following inscription on the rim:]

“THE DISTRICT COURT FOR LUBLIN-ZACHÓD * IN LUBLIN * 10 *”

[Oblong stamp:]

“Relevant signatures have been affixed upon the original copy.

Certified as a true copy of the original document

By the Clerk of the Court”

[Illegible signature]

Repertory No. 120/2021

I, the undersigned Agata Malczyk-Wołkowska, sworn translator of the English language entered on the list of sworn translators at the Ministry of Justice under No. TP/531/06, do hereby certify that the foregoing text is a true and complete translation of the original Polish document provided to me.

Warsaw, 4th November 2021

No. of certified pages: 12