

**Certified translation from the Polish language**

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

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

The 9<sup>th</sup> Criminal Division -/-

ul. Krakowskie Przedmieście 76 -/-

20-950 Lublin -/-

Date of dispatch: 28<sup>th</sup> October 2021 -/-

Case Ref. No. **IX Kp 840/21** -/-

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

RP I Ds. 24.2018 -/-

**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, 9<sup>th</sup> 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 840/21 -/-**

**THE DECISION -/-**

26<sup>th</sup> October 2021 -/-

**The District Court for Lublin – Zachód in Lublin, 9<sup>th</sup> 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 30<sup>th</sup> August 2021 on using of a preventive measure in the form of a ban on leaving the country, seizure of the passport and police surveillance. -/-

**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 30<sup>th</sup> August 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 applied in the case of Bartosz Kramek, a preventive measure in in the form of a ban on leaving the country, seizure of the passport and police surveillance obligating the suspect to report five times per week at the 7<sup>th</sup> District Police Headquarters in Warsaw. 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, as the suspect had defaulted from his obligation to submit his passport in accordance with the Prosecutor's decision of 15<sup>th</sup> July 2021. He argued that considering the status quo of the proceedings, application of a financial surety and ban on leaving the country would be insufficient to prevent the suspect from attempting to interfere with the course of investigation. In particular, owing to the lack of a permanent residence address, serving summons for subsequent procedural actions might not be possible, and the domicile address

of the suspect's counsel for defence is not an address for the service of process in the meaning of Article 132 of the Code of Criminal Procedure. -/-

The above decision was challenged in its entirety, in favour of the suspect, by Michał Królikowski, 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 7 of the Code of Criminal Procedure in conjunction with Article 249 § 1 of the Code of Criminal Procedure, as it is based on an arbitrary assumption made contrary to the principles of logic and sound judgment, that in order to ensure the proper course of the proceedings, a number of preventive measures such as a ban on leaving the country, seizure of the passport and police surveillance should be applied; 2. Article 258 § 4 of the Code of Criminal Procedure in conjunction with Article 258 § 1 – 2 of the Code of Criminal Procedure – by disproportionate use of such preventive measures; 3. Article 258 § 1 point 1 of the CCP in conjunction with Article 277 §1 of the CCP by applying the aforementioned measures even though such preventive measures may only be used if there are reasonable grounds to believe that the suspect may flee away, considering that no such presumptions have been presented in the challenged decision, and the Prosecutor's Office has also been notified about the fact that the suspect does not have a passport; 4. Article 275 § 1 & 2 of the CCP by obligating the suspect to report at a designated police unit five times per week, even though the decision does not specify any substantiation for the necessity of such frequent surveillance, and the applied measure is disproportionate and unfounded. Moreover, it deprives the suspect of the possibility to function in a free environment and perform his professional duties; 5. Article 94 § 1 points 4-5 of the CCP by providing a legal basis not corresponding to the actual content of the decision i.e. failure to provide a legal basis for the use of police surveillance, Article 275 § 1 of the CCP, at the same time, including references to the CCP provision in the substantiation, even though the contested decision has not issued based on such provision (Article 258 § 1 of the CCP), and by providing a succinct substantiation of the contested decision, which prevents its appellate review, and does not fulfil any persuasive function. Reassuming, the counsel for the defence applied for the revision of the contested decision and lifting of a ban on leaving the country, combined with seizure of the passport and police surveillance. -/-

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 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 indicated that the suspect is unable to comply with his obligation to submit his passport due to some circumstances independent of his will i.e. he arriving in Poland with his ID card only, leaving his passport in Brussels. At the same time, the suspect is not allowed to travel to Belgium in order to collect his passport and return to Poland, considering that the decision on the ban on leaving the country is enforceable. -/-

**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 15<sup>th</sup> July 2021 did not consider that the conditional application of any preventive measures other than a financial surety would be necessary. -/-

On 30<sup>th</sup> August 2021 the Prosecutor issued his decision on the use of preventive measures in the form of a ban on leaving the country, seizure of the passport and police surveillance (thus adding the police surveillance to the scope of the hitherto applied preventive measures set

forth in the decision of 15<sup>th</sup> July 2021). We need to agree with the Prosecutor's standpoint on the existence of the prerequisites referred to in Article 249 § 1 of the CCP, and Article 258 § 2 of the CCP. 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. Even though the suspect has been presented with the decision on supplementary charges, such occurrence does not affect the assessment of the prerequisite set forth in Article 258 § 2 of the CCP. 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. -/-

A succinct statement that the lack of a permanent residence address of the suspect may render serving summons for subsequent procedural actions impossible, does not sufficiently justify this pre-condition. In the Court's view, only such conduct of the suspect that would actually disrupt the course of the proceedings may necessitate using of additional, if not more severe, preventive measures, not to mention the effect stipulated in Article 268 § 1 of the Code of Criminal Procedure, when the subject of the surety is forfeited if the defendant flees or goes into hiding, or may be forfeited if he otherwise obstructs the criminal proceedings. Meanwhile, the suspect appeared for the interrogation on 12<sup>th</sup> August this year and for the hearing in this case. Moreover, as a public person, he does not keep his activities secret. -/-

It should be indicated that when specifying the legal basis of his decision, the Prosecutor has only pointed out to Article 258 § 2 of the Code of Criminal Procedure, whereas in the substantiation thereof, he has mentioned the precondition set forth in Article 258 § 1 of the CCP, without providing any convincing rationale thereof, which, in fact, violates the provision of Article 94 § 1 point 4 of the CCP, just like an omission of the legal basis of the use of the police surveillance i.e. Article 275 § 1 of the CCP. -/-

In the Court's opinion, the Prosecutor has failed to demonstrate that only the joint application of all preventive measures i.e. the one applied by the Court in the form of a financial surety, and those suggested by the Prosecutor will ensure the proper course of the proceedings. The hitherto measure is proportionate to the actual gravity of the charges against the suspect. It should be noted that letters and summons may be served pursuant to Article 132 § 3 of the CCP and Article 137 of the CCP. Only in the case of evasion of duties by the suspect, despite

summons served in the manner prescribed hereinabove, the type of preventive measure may be changed. -/-

Reassessing, in the Court's view, the suspect's procedural status has not changed since the date of issuance of the decision of 15<sup>th</sup> July 2021 by the Regional Court. No irregularities of the suspect's conduct or attempts to disrupt the course of proceedings have been reported. The inability to submit the passport has been reasonably justified. 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 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]*

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**Repertory No. 121/2021**

*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, 4<sup>th</sup> November 2021*

*No. of certified pages: 12*