

Warrant or not, the cops are coming: Polish government breaches ban on double jeopardy



(Photo by Omar Marques/Getty Images)

When the prosecutor fails to get a European arrest warrant from a judge, he chooses another judge and asks again, and then maybe again: 'Prosecutor could keep filing EAW motions until a judge endorses the prosecution's view. That would hollow out the meaning of finality and subject the targeted person to unlimited pressure.'

In recent months Poland has seen an unprecedented situation. A European Arrest Warrant (EAW) against Marcin Romanowski—an opposition Law and Justice (PiS) MP targeted by the Tusk administration and granted political asylum in Hungary—was first quashed, only for a different judge to re-issue it two months later. This came after the Justice Minister's intervention and a series of steps of highly questionable legality, on the basis of the very same facts. This raises fundamental doubts about compliance with domestic law and international standards, as it amounts to a breach of the double jeopardy ban.

On December 19, 2025, Judge Dariusz Łubowski of the Warsaw Regional Court—an exceptionally respected specialist with more than 30 years on the bench—quashed the EAW against Romanowski. A year earlier, acting on the prosecution's request, he had issued that EAW; since then, he became familiar with circumstances that led him to change his position and issue a decision whose operative part, and even more so its reasoning, enraged Donald Tusk's government.

In particular, Judge Łubowski stated that in Poland—an EU member state—there is “an extremely dangerous phenomenon for a democratic state governed by the rule of law, unknown in any civilised legal order: Interference by the highest-ranking representatives of the executive with judicial independence.” He pointed to recurring “serious violations of the internal constitutional order, blatant breaches of the law, and persecution of the opposition for base motives (in particular revenge), along with attempts to enlist the judiciary in that persecution”—to such an extent that another EU member state, Hungary, found it “necessary and justified to grant the persecuted citizen of such a member state refugee status and international protection.”

Questioning the nature of the allegations against Romanowski, Łubowski described the statements and actions of those in power in this case as “devastating the image of the Polish justice system” and “annihilating the credibility of the Polish state, including the Polish judiciary.” Recognising the legality and EU-law compatibility of Hungary's December 2024 decision to grant Romanowski political asylum, he said the EAW was being used as “an instrument of political repression,” and its use as “disqualifying the Polish executive—especially the National Public Prosecutor's Office—as an organ of a democratic state governed by the rule of law.”

Judge Łubowski also noted that Interpol's April 2025 refusal to issue a Red Notice and pursue international action was motivated by the incompatibility of the Polish authorities' actions with Interpol's aims, and that those actions constituted an "affront to the catalogue of human and civil rights contained in the Universal Declaration of Human Rights".

From Friday to Monday—already on 22 December 2025—the prosecution filed another request to issue an EAW against Romanowski, based on the same allegations, facts, and evidence. At the same time, at the prosecution's request, Judge Łubowski was removed from the case; in his place—contrary to the statutory principle of random case allocation— a new judge was appointed from an on-call roster. Notably, immediately before the appointment she was added to that roster in place of another on-call judge. Ultimately, on February 17, 2026, the EAW against Romanowski was re-issued.

Beyond the question of an improperly constituted court issuing the EAW—and, of course, the absurdity of the allegations themselves, which amount to classic lawfare, and an unwarranted criminalisation of lawful decisions taken within the sphere of administrative discretion—the core problem is that the renewed prosecutorial motion relied on no new evidence and no new circumstances. This raises a fundamental question: Does Polish criminal procedure allow a "second attempt" at an EAW without any change in the evidentiary situation?

The decisive point is the legal nature of a decision quashing an EAW. The legislature has not provided any ordinary appeal against a decision quashing an EAW. This applies both to the prosecutor and to the person concerned. The EAW mechanism in the EU was designed as a fast, efficient tool of judicial cooperation; that is precisely why the legislature dispensed with classic two-instance review. But if no remedy exists, the court's decision must be treated as definitive.

In that situation, instead of filing an inadmissible complaint, the prosecution chose to submit a fresh motion—effectively seeking a different outcome from a different judge. That leads to a basic doubt: Can new procedures be created de facto "through practice"? In criminal law, the principle is especially strict: state authorities may act only on the basis of, and within the limits of, the law. If the statute does not provide a specific procedural route, it cannot be "read into" the system.

This is particularly important where personal liberty is at stake. An EAW results in detention and arrest in another EU member state. It is therefore a measure with severe consequences. Yet Polish law contains no provision allowing a prosecutor to overturn a final decision quashing an EAW in the absence of new evidence. Creating such a "parallel track" through procedural manoeuvres would amount to inventing a new procedure without statutory basis. Criminal-law doctrine stresses that this is incompatible with the rule of law: law-enforcement bodies cannot acquire additional powers at the citizen's expense through expansive interpretation.

The situation can be compared to other procedural mechanisms. If a court finally refuses pre-trial detention, the prosecutor cannot keep filing identical motions in the hope that "a different judge will agree." The same applies to motions to recuse a judge: if based on the same grounds, they are left without examination, to prevent abuse and destabilisation. Although *res judicata* is classically associated with convictions or acquittals on the merits, its underlying rationale—finality and stability of decisions—also applies to incidental rulings. A final decision should bind the parties and the state authorities. This is all the truer where the principle *ne bis in idem* and the prohibition of double jeopardy is at stake.

If the opposite logic were accepted, a prosecutor—without any change in the case—could keep filing EAW motions until a judge endorses the prosecution's view. That would hollow out the meaning of finality and subject the targeted person to unlimited pressure. And that is precisely what happened in Romanowski's case. The matter is even more scandalous because it is overtly political: It is the subject of constant attacks by politicians of the governing coalition and of public declarations of guilt without any judgment. The judge who issued an inconvenient ruling was not only removed from the case but also subjected to reprisals. First, his

workload was almost doubled, despite already exceeding the standard quota; he was then unlawfully denied the right to appeal; and ultimately, he was removed as head of the international cooperation section.

The case also has an EU and Convention dimension. The Court of Justice of the EU has repeatedly stressed that the EAW is based on mutual trust but cannot operate at the expense of fundamental rights. The EAW mechanism must be applied in line with rule-of-law standards.

The European Court of Human Rights, in turn, has emphasised that any deprivation of liberty must be “lawful” and free from arbitrariness. If there is no legal basis for re-issuing an EAW, detention on that basis could be challenged as contrary to Article 5 of the European Convention on Human Rights. Re-issuing an EAW without any change in circumstances, where the earlier quashing rested on rights-based concerns, should therefore be regarded as a breach of those standards.

At stake are fundamental principles of the rule of law: legality, legal certainty, stability of judicial decisions, and protection of personal liberty. If a final decision quashing an EAW can be bypassed by filing the same motion before a different judge, there is effectively no limit. Any unfavourable decision could be “corrected” by re-launching the same repressive procedure. But can a state governed by the rule of law allow repeated attempts to reach the same result, using the same arguments, until it succeeds? This is hard to reconcile with a fair-trial guarantee and with Europe’s human-rights standards. The answer matters not only for Poland, but for the credibility of the entire European system of protection of individual rights.

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3 March 2026