

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

17 December 2020 (\*)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 1(3) – Article 6(1) – Surrender procedures between Member States – Conditions for execution – Charter of Fundamental Rights of the European Union – Second paragraph of Article 47 – Right of access to an independent and impartial tribunal – Systemic or generalised deficiencies – Concept of ‘issuing judicial authority’ – Taking into consideration of developments after the European arrest warrant concerned has been issued – Obligation of the executing judicial authority to determine specifically and precisely whether there are substantial grounds for believing that the person concerned will run a real risk of breach of his or her right to a fair trial if he or she is surrendered)

In Joined Cases C-354/20 PPU and C-412/20 PPU,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decisions of 31 July and 3 September 2020, received at the Court on 31 July and 3 September 2020, in proceedings relating to the execution of European arrest warrants issued in respect of

**L** (C-354/20 PPU),

**P** (C-412/20 PPU),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, M. Vilaras (Rapporteur), E. Regan, L. Bay Larsen, N. Piçarra and A. Kumin, Presidents of Chambers, T. von Danwitz, D. Šváby, S. Rodin, K. Jürimäe, L.S. Rossi, I. Jarukaitis and N. Jääskinen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Ferreira, Principal Administrator,

having regard to the requests of the Rechtbank Amsterdam (District Court, Amsterdam) of 31 July and 3 September 2020 that the references for a preliminary ruling be dealt with under the urgent procedure, pursuant to Article 107 of the Rules of Procedure of the Court,

having regard to the written procedure and further to the hearing on 12 October 2020,

after considering the observations submitted on behalf of:

- L, by M.A.C. de Bruijn and H.A.F.C. Tack, advocaten,
- P, by T.E. Korff and T. Mustafazade, advocaten,

- the Openbaar Ministerie, by K. van der Schaft and C.L.E. McGivern,
- the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,
- the Belgian Government (C-354/20 PPU), by M. Van Regemorter and M. Jacobs, acting as Agents,
- Ireland, by J. Quaney, acting as Agent, and by C. Donnelly, Barrister-at-Law,
- the Polish Government, by B. Majczyna, A. Dalkowska, J. Sawicka and S. Żyrek, acting as Agents,
- the European Commission, by P. Van Nuffel, J. Tomkin, K. Herrmann and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 November 2020,

gives the following

## **Judgment**

1 These requests for a preliminary ruling concern the interpretation of Article 19(1) TEU, the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’) and Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) (‘Framework Decision 2002/584’).

2 The requests have been made in proceedings in the Netherlands concerning the execution of two European arrest warrants issued respectively in Case C-354/20 PPU on 31 August 2015 by the Sąd Okręgowy w Poznaniu (Regional Court, Poznań, Poland) in connection with criminal proceedings in respect of L and, in Case C-412/20 PPU, on 26 May 2020 by the Sąd Okręgowy w Sieradzu (Regional Court, Sieradz, Poland), for the purposes of executing a custodial sentence imposed on P.

## **Legal context**

### ***European Union law***

3 Recitals 5, 6 and 10 of Framework Decision 2002/584 read as follows:

‘(5) The objective set for the [European] Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the “cornerstone” of judicial cooperation.

...

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) [TEU], determined by the Council [of the European Union] pursuant to Article 7(1) [TEU] with the consequences set out in Article 7(2) thereof.’

4 Article 1 of that framework decision, entitled ‘Definition of the European arrest warrant and obligation to execute it’, provides:

‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].’

5 Articles 3, 4 and 4a of Framework Decision 2002/584 set out the grounds for mandatory or optional non-execution of a European arrest warrant.

6 Article 6 of that framework decision, entitled ‘Determination of the competent judicial authorities’, provides:

‘1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.’

7 Article 15 of Framework Decision 2002/584, entitled ‘Surrender decision’, states:

‘1. The executing judicial authority shall decide, within the time limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and

Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.'

### *Netherlands law*

8 Framework Decision 2002/584 was transposed into Netherlands law by the Wet tot implementatie van het kaderbesluit van de Raad van de Europese Unie betreffende het Europees aanhoudingsbevel en de procedures van overlevering tussen de lidstaten van de Europese Unie (Law implementing the Framework Decision of the Council of the European Union on the European arrest warrant and the surrender procedures between the Member States of the European Union) of 29 April 2004 (Stb. 2004, No 195), as last amended by the Law of 22 February 2017 (Stb. 2017, No 82).

### **The disputes in the main proceedings and the questions referred for a preliminary ruling**

#### *Case C-354/20 PPU*

9 On 7 February 2020, the officier van justitie (representative of the public prosecution service, Netherlands) requested the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands) to execute a European arrest warrant issued on 31 August 2015 by the Sąd Okręgowy w Poznaniu (Regional Court, Poznań).

10 That European arrest warrant is for the arrest and surrender of L, a Polish national who is not domiciled or permanently resident in the Netherlands, for the purposes of conducting a criminal prosecution in respect of drugs trafficking and possession of false identity documents.

11 The referring court examined the request for execution of the European arrest warrant at a public hearing on 10 March 2020. On 24 March 2020, it delivered an interlocutory judgment suspending the investigation in order to enable L and the public prosecution service to submit their written observations on the most recent developments concerning the rule of law in Poland and their consequences as regards the obligations of that court arising from the judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586).

12 On 12 June 2020, at a public hearing held after L's and the public prosecution service's observations had been submitted, the referring court delivered a new interlocutory judgment, by which it requested the public prosecution service to refer certain questions to the judicial authority which issued the European arrest warrant in question. The latter replied, on 25 June and 7 July 2012, to the questions referred, with the exception of those concerning the Sąd Najwyższy (Izba Dyscyplinarna) (Supreme Court, Disciplinary Chamber, Poland), in respect of which it stated that the referring court should approach the Sąd Najwyższy (Supreme Court) directly.

13 At the request of the referring court, the public prosecution service again referred a question concerning the Sąd Najwyższy (Supreme Court) to the judicial authority which

issued the European arrest warrant in question and, through Eurojust, to the Sąd Najwyższy (Supreme Court) itself, without, however, obtaining any answer.

14 The referring court refers to several recent developments in the light of which it has doubts as to the independence of the judiciary in Poland, including, in particular:

- the judgments of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982) and of 26 March 2020, *Miasto Łowicz and Prokurator Generalny* (C-558/18 and C-563/18, EU:C:2020:234);
- the judgment of the Sąd Najwyższy (Izba Pracy i Ubezpieczeń Społecznych) (Supreme Court, Chamber of Labour and Social Insurance) of 5 December 2019, in which that court, ruling in the dispute which gave rise to the request for a preliminary ruling in Case C-585/18, held that the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) was not, in its current composition, an impartial body independent of the legislature and the executive;
- the action for failure to fulfil obligations brought by the European Commission against the Republic of Poland (Case C-791/19), and the order of 8 April 2020, *Commission v Poland* (C-791/19 R, EU:C:2020:277);
- the adoption on 20 December 2019 by the Republic of Poland of a new law on the system of justice, which entered into force on 14 February 2020 and led the Commission to initiate infringement proceedings on 29 April 2020 by sending that Member State a letter of formal notice concerning that new law and
- the holding of a hearing on 9 June 2020 before the Sąd Najwyższy (Izba Dyscyplinarna) (Supreme Court, Disciplinary Chamber) concerning the lifting of the criminal immunity of a Polish judge and the delivery of a judgment on the same date, according to official information received by the referring court.

15 The referring court considers, on the basis, inter alia, of those new matters, that the independence of the Polish courts, including of the court which issued the European arrest warrant at issue in the main proceedings, is not ensured. In the opinion of the referring court, Polish judges run the risk of being the subject of disciplinary proceedings before a body whose independence is not ensured, in particular where those judges determine whether a judge or a court satisfies the safeguards of independence required by EU law.

16 According to the referring court, in the first place, the question arises as to whether European Union law precludes an executing judicial authority from executing a European arrest warrant issued by an issuing judicial authority whose independence is no longer guaranteed, in the light of developments which occurred after that arrest warrant was issued.

17 In that regard, the referring court considers that it is apparent from the judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 74) that, even if the authority issuing a European arrest warrant were a judge or a court, that authority must be in a position to give assurances to the executing judicial authority that it acts independently in the execution of those of its responsibilities which are inherent in the issuing of such an arrest warrant. In addition, according to the referring court, a court which has issued a European arrest warrant

must continue to satisfy that requirement even after that arrest warrant has been issued, since it could be called upon to carry out tasks that are intrinsically linked to the issue of a European arrest warrant, such as the provision of supplementary or additional information, within the meaning of Article 15(2) and (3) of Framework Decision 2002/584, or of a guarantee as to the conditions of detention or reception of the person surrendered. The question whether the executing judicial authority must execute a European arrest warrant issued by an issuing judicial authority which may no longer satisfy the requirements of effective judicial protection has not yet been resolved by the Court.

18 In the second place, in the event that the first question referred for a preliminary ruling is answered in the negative, the referring court notes that it is apparent from the recent developments mentioned in paragraph 14 of this judgment that there are systemic and generalised deficiencies concerning the independence of the Polish judiciary, with the result that the right to an independent tribunal is no longer guaranteed for any person obliged to appear before a Polish court. The question therefore arises whether such a finding is sufficient in itself to justify non-execution of a European arrest warrant, without its being necessary to examine, as required by the judgment of 25 July 2018, *Minister for Justice and Equality* (C-216/18 PPU, EU:C:2018:586, paragraph 79), the personal situation of the person in respect of whom such an arrest warrant has been issued.

19 According to the referring court, that question must be answered in the affirmative, notwithstanding that judgment, which does not concern the situation where systemic and generalised deficiencies relating to the independence of the judiciary are such that the legislation of the issuing Member State no longer guarantees that independence.

20 In the third place, if the second question referred is answered in the negative, the referring court notes that although the question referred to the issuing judicial authority of the European arrest warrant at issue in the main proceedings, concerning the Sąd Najwyższy (Izba Dyscyplinarna) (Supreme Court, Disciplinary Chamber), has remained unanswered, it knows from other sources that the latter has continued to rule on cases concerning Polish judges even after the adoption of the order of the Court of 8 April 2020, *Commission v Poland* (C-791/19 R, EU:C:2020:277). In those circumstances, the referring court wonders whether that finding provides sufficient grounds for taking the view that there are substantial grounds for believing that the person in respect of whom a European arrest warrant such as that at issue in the main proceedings has been issued will run a real risk of breach of his fundamental right to a fair trial, even if his personal situation, the nature of the offences in respect of which he is being prosecuted and the factual context in which the arrest warrant is issued do not permit the presumption that the executive or legislature will exert pressure on the courts of the issuing Member State in order to influence the criminal proceedings initiated against him. In its view, that question must also be answered in the affirmative.

21 In those circumstances, the Rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Do Framework Decision [2002/584], the second paragraph of Article 19(1) TEU and/or the second paragraph of Article 47 of the Charter indeed preclude the executing judicial authority from executing a [European arrest warrant] issued by a court where the national legislation of the issuing Member State has been amended after that [European arrest

warrant] was issued such that the court no longer meets the requirements of effective or actual judicial protection since that legislation no longer guarantees the independence of that court?

(2) Do Framework Decision [2002/584] and the second paragraph of Article 47 of the Charter indeed preclude the executing judicial authority from executing a [European arrest warrant] when it has established that there is a real risk in the issuing Member State of breach of the fundamental right to an independent tribunal for any suspected person – and thus also for the requested person – irrespective of which courts of that Member State have jurisdiction over the proceedings to which the requested person will be subject and irrespective of the requested person’s personal situation, the nature of the offence for which he is being prosecuted and the factual context that forms the basis of the [European arrest warrant], where that real risk is related to the fact that the courts of the issuing Member State are no longer independent on account of systemic and generalised deficiencies?

(3) Do Framework Decision [2002/584] and the second paragraph of Article 47 of the Charter indeed preclude the executing judicial authority from executing a [European arrest warrant] when it has established that:

- there is a real risk in the issuing Member State of breach of the fundamental right to a fair trial for any suspected person, where that risk is connected with systemic and generalised deficiencies relating to the independence of that Member State’s judiciary,
- those systemic and generalised deficiencies are therefore not only liable to have negative consequences, but actually do have such consequences for the courts of that Member State with jurisdiction over the proceedings to which the requested person will be subject, and
- there are therefore serious and established grounds for believing that the requested person runs a real risk of breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial,

even though, aside from those systemic and generalised deficiencies, the requested person has not expressed any specific concerns, and even though the requested person’s personal situation, the nature of the offences for which he is being prosecuted and the context that forms the basis of the [European arrest warrant], aside from those systemic and generalised deficiencies, do not give rise to fears that the executive and/or legislature will exert concrete pressure on or influence his trial?’

### *Case C-412/20 PPU*

22 On 23 June 2020, the public prosecution service requested the Rechtbank Amsterdam (District Court, Amsterdam) to execute a European arrest warrant issued on 26 May 2020 by the Sąd Okręgowy w Sieradzu (Regional Court, Sieradz).

23 That European arrest warrant is for the arrest and surrender of P, for the purposes of the execution of the balance of a custodial sentence imposed on P by a judgment of the Sąd Rejonowy w Wieluniu (District Court, Wieluń, Poland) of 18 July 2019. The referring court states that P was convicted on various counts of threatening behaviour and ill-treatment, all of which he committed within a period of 5 years after serving a custodial sentence equal to or greater than six months which had been imposed on him for similar offences.

24 The referring court makes reference to the grounds relied on in the request for a preliminary ruling which is the subject of Case C-354/20 PPU. That court states that, in its view, a court which issues a European arrest warrant must satisfy the conditions necessary to ensure effective judicial protection both where the surrender of the requested person is sought for the purpose of criminal prosecution and where it is sought for the purpose of the execution of a custodial sentence. It adds that, in Case C-412/20 PPU, the European arrest warrant at issue in the main proceedings was issued after the recent developments mentioned in paragraph 15 of this judgment.

25 In those circumstances, the Rechtbank Amsterdam (District Court, Amsterdam) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Do Framework Decision [2002/584], the second subparagraph of Article 19(1) [TEU] and/or the second paragraph of Article 47 of the [Charter] indeed preclude an executing judicial authority from executing a European arrest warrant issued by a court in the case where that court does not meet the requirements of effective judicial protection/actual judicial protection, and at the time of issuing the European arrest warrant already no longer met those requirements, because the legislation in the issuing Member State does not guarantee the independence of that court, and at the time of issuing the European arrest warrant already no longer guaranteed that independence?’

### **Procedure before the Court**

26 The referring court requested that this request for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Court’s Rules of Procedure. In support of its requests, it relied on the fact that both L and P are currently deprived of their liberty.

27 It should be noted, in the first place, that these requests for a preliminary ruling concern, *inter alia*, the interpretation of Framework Decision 2002/584, which falls within the scope of the fields referred to in Title V of Part Three of the FEU Treaty on the area of freedom, security and justice. They may therefore be dealt with under the urgent preliminary ruling procedure.

28 In the second place, it is necessary, according to the case-law of the Court, to take into account the fact that the person concerned in the case in the main proceedings is currently deprived of his liberty and that the question whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings (judgment of 27 May 2019, *OG and PI (Public Prosecutor’s Offices in Lübeck and Zwickau)*), C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 38 and the case-law cited).

29 According to the explanations provided by the referring court, the detention measure to which L is subject was ordered in the context of the execution of the European arrest warrant issued in respect of him. As regards P, although the referring court stated that, when the reference for a preliminary ruling in Case C-412/20 PPU was communicated to the Court, he was still being held in custody pursuant to a custodial sentence imposed by a Netherlands court, it nevertheless specified that that custody would end on 20 October 2020 and that, from the following day, P would be held in custody for the purposes of the execution of the European arrest warrant issued in respect of him.

30 In those circumstances, the Fourth Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided, on 12 August and 10 September 2020, respectively, to accede to the referring court's requests that the present references for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

31 That chamber also decided to remit Cases C-354/20 PPU and C-412/20 PPU to the Court for them be assigned to the Grand Chamber.

32 By decision of the Court of 15 September 2020, Cases C-354/20 PPU and C-412/20 PPU were joined for the purposes of the oral part of the procedure and of the judgment, in view of the connection between them.

### **Consideration of the questions referred**

33 By its questions in these two cases, which it is appropriate to examine together, the referring court asks, in essence, whether Article 6(1) and Article 1(3) of Framework Decision 2002/584 must be interpreted as meaning that, where the executing judicial authority, called upon to decide whether a person in respect of whom a European arrest warrant has been issued is to be surrendered, has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the Member State that issues that arrest warrant which existed at the time of issue of that warrant or which arose after that issue, that authority may deny the status of 'issuing judicial authority' to the court which issued that arrest warrant and may presume that there are substantial grounds for believing that that person will, if he or she is surrendered to that Member State, run a real risk of breach of his or her fundamental right to a fair trial, guaranteed by the second paragraph of Article 47 of the Charter, without carrying out a specific and precise verification which would take account of, *inter alia*, his or her personal situation, the nature of the offence in question and the factual context in which that warrant was issued.

34 In order to answer the questions referred, it is necessary, in the first place, to determine whether Article 6(1) of Framework Decision 2002/584 must be interpreted as meaning that an executing judicial authority may deny the status of 'issuing judicial authority', within the meaning of that provision, to the court which issued a European arrest warrant on the sole ground that it has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State which existed at the time of the issue of that arrest warrant or which arose after that issue.

35 In that regard, it should be noted that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (Opinion 2/13 of 18 December 2014, EU:C:2014:2454, paragraph 191, and judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 43).

36 In particular, as far as concerns Framework Decision 2002/584, it is clear from recital 6 thereof that the European arrest warrant established by that framework decision ‘is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the “cornerstone” of judicial cooperation’. As the Court has observed, that principle is applied in Article 1(2) thereof which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of that framework decision (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 41).

37 It follows that executing judicial authorities may therefore, in principle, refuse to execute such a warrant only on the grounds for non-execution exhaustively listed by Framework Decision 2002/584 and that execution of the warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 thereof. Accordingly, while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception which must be interpreted strictly (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 41 and the case-law cited).

38 However, the principle of mutual recognition proceeds from the assumption that only European arrest warrants, within the meaning of Article 1(1) of Framework Decision 2002/584, must be executed in accordance with the provisions of that decision, which requires that such a warrant, which is classified in that provision as a ‘judicial decision’, be issued by a ‘judicial authority’ within the meaning of Article 6(1) of that framework decision (judgment of 27 May 2019, *OG and PI (Public Prosecutor’s Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 46 and the case-law cited). That latter term implies that the authority concerned acts independently in the execution of those of its responsibilities which are inherent in the issuing of a European arrest warrant (see, to that effect, judgment of 27 May 2019, *OG and PI (Public Prosecutor’s Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraphs 74 and 88).

39 In that regard, it must be recalled that the requirement of judicial independence forms part of the essence of the fundamental right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 48).

40 In those circumstances, it is for each Member State, in order to ensure the full application of the principles of mutual trust and mutual recognition which underpin the operation of the mechanism of the European arrest warrant established by Framework Decision 2002/584, to ensure, subject to final review by the Court, that the independence of its judiciary is safeguarded by refraining from any measure capable of undermining that independence.

41 Nonetheless, an executing judicial authority which has evidence of systemic or generalised deficiencies concerning the independence of the judiciary of the issuing Member State which existed at the time of issue of the European arrest warrant concerned or which arose after that issue cannot deny the status of ‘issuing judicial authority’, within the meaning

of Article 6(1) of Framework Decision 2002/584, to all judges or all courts of that Member State acting by their nature entirely independently of the executive.

42 Indeed, the existence of such deficiencies does not necessarily affect every decision that the courts of that Member State may be led to adopt in each particular case.

43 An interpretation to the contrary would amount to extending the limitations that may be placed on the principles of mutual trust and mutual recognition beyond ‘exceptional circumstances’, within the meaning of the case-law referred to in paragraph 35 of this judgment, by leading to a general exclusion of the application of those principles in the context of European arrest warrants issued by the courts of the Member State concerned by those deficiencies.

44 Moreover, it would mean that no court of that Member State could any longer be regarded as a ‘court or tribunal’ for the purposes of the application of other provisions of EU law, in particular Article 267 TFEU (see, in that regard, judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, paragraphs 38 and 43).

45 The principles laid down in the judgment of 27 May 2019, *OG and PI (Public Prosecutor’s Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), which is mentioned by the referring court, cannot call into question the foregoing considerations.

46 In that judgment, the Court first of all recalled that the words ‘judicial authority’, contained in Article 6(1) of Framework Decision 2002/584, are not limited to designating only the judges or courts of a Member State, but must be construed as designating, more broadly, the authorities participating in the administration of criminal justice in that Member State, as distinct from, inter alia, ministries or police services which are part of the executive (judgment of 27 May 2019, *OG and PI (Lübeck and Zwickau Public Prosecutor’s Offices)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 50).

47 The Court then held that the issuing judicial authority must be in a position to give assurances to the executing judicial authority that, as regards the guarantees provided by the legal order of the issuing Member State, it acts independently in the execution of those of its responsibilities which are inherent in the issuing of a European arrest warrant. That independence requires that there are statutory rules and an institutional framework capable of guaranteeing that the issuing judicial authority is not exposed, when adopting a decision to issue such an arrest warrant, to any risk of being subject, inter alia, to an instruction in a specific case from the executive (judgment of 27 May 2019, *OG and PI (Public Prosecutor’s Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 74).

48 The Court thus held that the public prosecutors’ offices at issue in the cases which gave rise to that judgment did not satisfy the requirement of independence inherent in the concept of ‘issuing judicial authority’, within the meaning of Article 6(1) of Framework Decision 2002/584, not on the basis of material indicating the existence of systemic or generalised deficiencies concerning the independence of the judiciary of the Member State to which those public prosecutors belonged, but on account of statutory rules and an institutional framework, adopted by that Member State by virtue of its procedural autonomy, which made those public prosecutors’ offices legally subordinate to the executive and thus exposed them to the risk of

being subject to directions or instructions in a specific case from the executive in connection with the adoption of a decision to issue a European arrest warrant.

49 In European Union law, the requirement that courts be independent precludes the possibility that they may be subject to a hierarchical constraint or subordinated to any other body and that they may take orders or instructions from any source whatsoever (see, to that effect, judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 44; of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 63, and of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 57).

50 In those circumstances, it cannot be inferred from the judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), that systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary, however serious, may be sufficient, on their own, to enable an executing judicial authority to consider that all the courts of that Member State fail to fall within the concept of an 'issuing judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584.

51 In the second place, it is necessary to determine whether Article 1(3) of Framework Decision 2002/584 must be interpreted as meaning that, where the executing judicial authority, which is called upon to decide whether a person in respect of whom a European arrest warrant has been issued is to be surrendered, has evidence of a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter, on account of systemic or generalised deficiencies concerning the independence of the judiciary of the issuing Member State, it may presume that there are substantial grounds for believing that that person will run such a risk if he or she is surrendered to that Member State, without carrying out a specific and precise verification which would take account of, inter alia, his or her personal situation, the nature of the offence in question and the factual context in which that warrant was issued.

52 In that regard, it should be recalled that, in the judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586, paragraph 79), the Court held that Article 1(3) of Framework Decision 2002/584 must be interpreted as meaning that, where the executing judicial authority, which is called upon to decide whether a person in respect of whom a European arrest warrant has been issued for the purposes of conducting a criminal prosecution is to be surrendered, has material, such as that set out in a reasoned proposal of the Commission adopted pursuant to Article 7(1) TEU, indicating that there is a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter, on account of systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary, that authority must determine, specifically and precisely, whether, having regard to his or her personal situation, to the nature of the offence for which he or she is being prosecuted and the factual context in which the European arrest warrant was issued, and in the light of the information provided by that Member State pursuant to Article 15(2) of that framework decision, there are substantial grounds for believing that that person will run such a risk if he or she is surrendered to that Member State.

53 It follows that the possibility of refusing to execute a European arrest warrant on the basis of Article 1(3) of Framework Decision 2002/584, as interpreted in that judgment, presupposes a two-step examination.

54 In the context of a first step, the executing judicial authority of the European arrest warrant in question must determine whether there is objective, reliable, specific and properly updated material indicating that there is a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter, on account of systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 61).

55 In the context of a second step, that authority must determine, specifically and precisely, to what extent those deficiencies are liable to have an impact at the level of the courts of that Member State which have jurisdiction over the proceedings to which the requested person will be subject and whether, having regard to his or her personal situation, to the nature of the offence for which he or she is being prosecuted and the factual context in which that arrest warrant was issued, and in the light of any information provided by that Member State pursuant to Article 15(2) of Framework Decision 2002/584, there are substantial grounds for believing that that person will run such a risk if he or she is surrendered to that Member State (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraphs 74 to 77).

56 It should be pointed out that, as was noted in paragraphs 53 to 55 of this judgment, the two steps of that examination involve an analysis of the information obtained on the basis of different criteria, with the result that those steps cannot overlap with one another.

57 It must be borne in mind in that regard that, as is apparent from recital 10 of Framework Decision 2002/584, implementation of the European arrest warrant mechanism may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 2 TEU, including that of the rule of law, determined by the European Council pursuant to Article 7(2) TEU, with the consequences set out in Article 7(3) TEU.

58 The Court has thus held that it is only if the European Council were to adopt a decision, such as that envisaged in the preceding paragraph, and the Council were then to suspend Framework Decision 2002/584 in respect of the Member State concerned that the executing judicial authority would be required to refuse automatically to execute any European arrest warrant issued by it, without having to carry out any specific assessment of whether the individual concerned runs a real risk that the essence of his or her fundamental right to a fair trial will be affected (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 72).

59 To accept that systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary, however serious they may be, give rise to the presumption that, with regard to the person in respect of whom a European arrest warrant has been issued, there are substantial grounds for believing that that person will run a real risk of breach of his or her fundamental right to a fair trial if he or she is surrendered to that Member State – which would justify the non-execution of that arrest warrant – would lead to an

automatic refusal to execute any arrest warrant issued by that Member State and therefore to a de facto suspension of the implementation of the European arrest warrant mechanism in relation to that Member State, whereas the European Council and the Council have not adopted the decisions envisaged in the preceding paragraph.

60 Consequently, in the absence of such decisions, although the finding by the executing judicial authority of a European arrest warrant that there are indications of systemic or generalised deficiencies so far as concerns the independence of the judiciary of the issuing Member State, or that there has been an increase in such deficiencies, must, as the Advocate General noted, in essence, in point 76 of his Opinion, prompt that authority to exercise vigilance, it cannot, however, rely on that finding alone in order to refrain from carrying out the second step of the examination referred to in paragraphs 53 to 55 of this judgment.

61 It is for that authority, in the context of that second step, to assess, where appropriate in the light of such an increase, whether, having regard to the personal situation of the person whose surrender is requested by the European arrest warrant concerned, the nature of the offence for which he or she is being prosecuted and the factual context in which the arrest warrant was issued, such as statements by public authorities which are liable to interfere with the way in which an individual case is handled, and having regard to information which may have been communicated to it by the issuing judicial authority pursuant to Article 15(2) of Framework Decision 2002/584, there are substantial grounds for believing that that person will run a real risk of breach of his or her right to a fair hearing once he or she has been surrendered to the issuing Member State. If that is the case, the executing judicial authority must refrain, pursuant to Article 1(3) of that framework decision, from giving effect to the European arrest warrant concerned. Otherwise, it must execute that warrant, in accordance with the obligation of principle laid down in Article 1(2) of that framework decision.

62 In that regard, it should also be added that the objective of the mechanism of the European arrest warrant is in particular to combat the impunity of a requested person who is present in a territory other than that in which he or she has allegedly committed an offence (see, to that effect, judgment of 6 December 2018, *IK (Execution of an additional sentence)*, C-551/18 PPU, EU:C:2018:991, paragraph 39).

63 That objective precludes an interpretation of Article 1(3) of Framework Decision 2002/584 according to which the existence of or increase in systemic or generalised deficiencies so far as concerns the independence of the judiciary in a Member State is sufficient, in itself, to justify a refusal to execute a European arrest warrant issued by a judicial authority of that Member State.

64 Such an interpretation would entail a high risk of impunity for persons who attempt to flee from justice after having been convicted of, or after they have been suspected of committing, an offence, even if there is no evidence, relating to the personal situation of those individuals, to suggest that they would run a real risk of breach of their fundamental right to a fair trial if they were surrendered to the Member State which issued the European arrest warrant concerned.

65 As regards the question whether the executing judicial authority must, where appropriate, take account of systemic or generalised deficiencies so far as concerns the independence of the judiciary in the issuing Member State which may have occurred after the issue of the European arrest warrant whose execution is sought, it must be recalled that, under

Article 1(1) of Framework Decision 2002/584, a European arrest warrant may be issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, both for the purposes of conducting a criminal prosecution and for the purposes of executing a custodial sentence or detention order.

66 Where a European arrest warrant is issued by a Member State with a view to the surrender of a requested person for the purposes of conducting a criminal prosecution, such as that at issue in the main proceedings in Case C-354/20 PPU, the executing judicial authority must, in order to assess specifically and precisely whether in the particular circumstances of the case there are substantial grounds for believing that following that surrender that person will run a real risk of breach of his or her fundamental right to a fair trial, examine in particular to what extent the systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary are liable to have an impact at the level of that Member State's courts with jurisdiction over the proceedings to which that person will be subject (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraphs 68 and 74). That examination therefore involves taking into consideration the impact of such deficiencies which may have arisen after the issue of the European arrest warrant concerned.

67 That will also be the case where a European arrest warrant is issued by a Member State with a view to the surrender of a requested person for the purposes of executing a custodial sentence or detention order when, following his or her possible surrender, he or she will be subject to new court proceedings, on account of the bringing of an action relating to the execution of that custodial sentence or that detention order or of an appeal against the judicial decision the execution of which is the subject of that European arrest warrant, as the case may be.

68 However, in the second case, the executing judicial authority must also examine to what extent the systemic or generalised deficiencies which existed in the issuing Member State at the time of issue of the European arrest warrant have, in the particular circumstances of the case, affected the independence of the court of that Member State which imposed the custodial sentence or detention order the execution of which is the subject of that European arrest warrant.

69 In the light of all the foregoing considerations, the answer to the questions referred is that Article 6(1) and Article 1(3) of Framework Decision 2002/584 must be interpreted as meaning that, where the executing judicial authority, which is called upon to decide whether a person in respect of whom a European arrest warrant has been issued is to be surrendered, has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the Member State that issues that arrest warrant which existed at the time of issue of that warrant or which arose after that issue, that authority cannot deny the status of 'issuing judicial authority' to the court which issued that arrest warrant and cannot presume that there are substantial grounds for believing that that person will, if he or she is surrendered to that Member State, run a real risk of breach of his or her fundamental right to a fair trial, guaranteed by the second paragraph of Article 47 of the Charter, without carrying out a specific and precise verification which takes account of, inter alia, his or her personal situation, the nature of the offence in question and the factual context in which that warrant was issued, such as statements by public authorities which are liable to interfere with how an individual case is handled.

## Costs

70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

**Article 6(1) and Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where the executing judicial authority, which is called upon to decide whether a person in respect of whom a European arrest warrant has been issued is to be surrendered, has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the Member State that issues that arrest warrant which existed at the time of issue of that warrant or which arose after that issue, that authority cannot deny the status of ‘issuing judicial authority’ to the court which issued that arrest warrant and cannot presume that there are substantial grounds for believing that that person will, if he or she is surrendered to that Member State, run a real risk of breach of his or her fundamental right to a fair trial, guaranteed by the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, without carrying out a specific and precise verification which takes account of, inter alia, his or her personal situation, the nature of the offence in question and the factual context in which that warrant was issued, such as statements by public authorities which are liable to interfere with how an individual case is handled.**

[Signatures]

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\* Language of the case: Dutch.