

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

31 January 2023 (\*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Surrender procedures between Member States – Conditions for execution – Jurisdiction of the issuing judicial authority – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Right of access to a tribunal previously established by law – Possibility of issuing a new European arrest warrant relating to the same person)

In Case C-158/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 9 March 2021, received at the Court on 11 March 2021, in the criminal proceedings against

**Lluís Puig Gordi,**

**Carles Puigdemont Casamajó,**

**Antoni Comín Oliveres,**

**Clara Ponsatí Obiols,**

**Meritxell Serret Aleu,**

**Marta Rovira Vergés,**

**Anna Gabriel Sabaté,**

intervening parties:

**Ministerio Fiscal,**

**Abogacía del Estado,**

**Partido político VOX**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen (Rapporteur), Vice-President, C. Lycourgos, E. Regan, P.G. Xuereb and L.S. Rossi, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, N. Piçarra, I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl, I. Ziemele and J. Passer, Judges,

Advocate General: J. Richard de la Tour,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 April 2022,

after considering the observations submitted on behalf of:

- Mr Puig Gordi, by S. Bekaert, advocaat, and G. Boyé Tuset, abogado,
- Mr Puigdemont Casamajó, by G. Boyé Tuset, abogado,
- Mr Comín Oliveres, by G. Boyé Tuset, J. Costa Rosselló and I. Elbal, abogados,
- Ms Ponsatí Obiols, by G. Boyé Tuset and I. Elbal Sánchez, abogados,
- Ms Rovira Vergés, by A. Van den Eynde Adroer, abogado,
- Ms Gabriel Sabaté, by B. Salellas Vilar, abogado,
- the Ministerio Fiscal, by F.A. Cadena Serrano, C. Madrigal Martínez-Pereda, J. Moreno Verdejo and J.A. Zaragoza Aguado, fiscales,
- the Partido político VOX, by M. Castro Fuertes, abogada, and M.P. Hidalgo López, procuradora,
- the Spanish Government, by S. Centeno Huerta, A. Gavela Llopis and M.J. Ruiz Sánchez, acting as Agents,
- the Belgian Government, by M. Jacobs, C. Pochet and M. Van Regemorter, acting as Agents, and by F. Matthis and B. Renson, avocats,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Romanian Government, by E. Gane and A. Wellman, acting as Agents,
- the European Commission, by J. Baquero Cruz and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 July 2022,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of 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 request has been made in the context of criminal proceedings brought against Mr Lluís Puig Gordi, Mr Carles Puigdemont Casamajó, Mr Antoni Comín Oliveres, Ms Clara

Ponsatí Obiols, Ms Meritxell Serret Aleu, Ms Marta Rovira Vergés and Ms Anna Gabriel Sabaté.

## **Legal context**

### *European Union law*

3 Recitals 6, 8 and 12 of Framework Decision 2002/584 are worded as follows:

‘(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.

...

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union ..., in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person’s position may be prejudiced for any of these reasons.

...’

4 Article 1 of that framework decision 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 of the Treaty on European Union.’

5 Articles 3, 4 and 4a of that framework decision set out the grounds for non-execution of a European arrest warrant.

6 Article 6(1) of that framework decision provides:

‘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.’

7 Article 8 of Framework Decision 2002/584 sets out the information which the European arrest warrant must contain and states that that arrest warrant must be translated into the official language or one of the official languages of the executing Member State.

8 Article 15(2) and (3) of that framework decision is worded as follows:

‘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 ... be furnished as a matter of urgency ...

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

### ***Belgian law***

9 Article 4 of the loi du 19 décembre 2003 relative au mandat d’arrêt européen (Law of 19 December 2003 on the European arrest warrant) (*Moniteur belge* of 22 December 2003, p. 60075), in the version applicable to the facts in the main proceedings, provides:

‘The execution of a European arrest warrant shall be refused in the following cases:

...

5° if there are serious reasons for believing that the execution of the European arrest warrant would have the effect of infringing the fundamental rights of the person concerned, as enshrined in Article 6 of the Treaty on European Union.’

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

10 In the context of the main criminal proceedings, European arrest warrants were issued by the Tribunal Supremo (Supreme Court, Spain), the referring court, on 14 October 2019 against Mr Puigdemont Casamajó and, on 4 November 2019, against Mr Comín Oliveres, Mr Puig Gordi and Ms Ponsatí Obiols.

11 The Kingdom of Belgium initiated proceedings for the execution of the European arrest warrants issued against Mr Puigdemont Casamajó, Mr Comín Oliveres and Mr Puig Gordi.

12 Those proceedings were suspended, in so far as they concern Mr Puigdemont Casamajó and Mr Comín Oliveres, after they acquired the status of Members of the European Parliament.

13 By order of 7 August 2020, the Nederlandstalige rechtbank van eerste aanleg Brussel (Brussels Court of First Instance (Dutch-speaking), Belgium), refused to execute the European arrest warrant issued against Mr Puig Gordi.

14 The referring court states that that decision was based on the assessment that the referring court did not have jurisdiction to hear the criminal proceedings against Mr Puig Gordi and, therefore, to issue that European arrest warrant. In that regard, referring to the case-law of the Court of Justice on the concept of ‘judicial authority’, within the meaning of Article 6 of Framework Decision 2002/584, and referring to recitals 8 and 12 of that framework decision, the judgment of the European Court of Human Rights (ECtHR) of 2 June 2005, *Claes and Others v. Belgium* (CE:ECHR:2005:0602JUD004682599), and Belgian law, the *Nederlandstalige rechtbank van eerste aanleg Brussel* (Brussels Court of First Instance (Dutch-speaking)) considered that it could rule on the jurisdiction of the issuing judicial authority, namely the referring court, for such purposes. It concluded that the referring court lacked jurisdiction, by relying on the opinions of the Working Group on Arbitrary Detention (‘the WGAD’) of 25 April and 13 June 2019, the judgments of the ECtHR of 22 June 2000, *Coëme and Others v. Belgium* (CE:ECHR:2000:0622JUD003249296), and of 2 June 2005, *Claes and Others v. Belgium* (CE:ECHR:2005:0602JUD004682599), recital 12 of that framework decision and provisions of Belgian and Spanish law.

15 The Belgian Public Prosecutor brought an appeal against the order of 7 August 2020, referred to in paragraph 13 of the present judgment, before the *cour d’appel de Bruxelles* (Court of Appeal, Brussels, Belgium), which dismissed that appeal by judgment of 7 January 2021.

16 The judgment of 7 January 2021 referred to a report by the WGAD of 27 May 2019, the judgments of the ECtHR cited in paragraph 14 of the present judgment and a document relating to the jurisdiction of the referring court which was provided, at the request of the Belgian Public Prosecutor, by a judge of the Criminal Chamber of that court. On the basis of that information, the *cour d’appel de Bruxelles* (Court of Appeal, Brussels) held that there was no express legal basis conferring jurisdiction on the referring court to try Mr Puig Gordi and inferred from this that the execution of the European arrest warrant issued against him would jeopardise his fundamental rights. In addition, it considered that it had to take into account an extremely serious risk of a breach of the presumption of innocence.

17 In that context, the referring court states that it must, *inter alia*, determine whether it may issue a new European arrest warrant against Mr Puig Gordi after the refusal of execution of a previous European arrest warrant and whether it must maintain or withdraw the European arrest warrants issued against other defendants in the main criminal proceedings at issue.

18 In that regard, it considers, in the first place, that the executing judicial authority does not have, under EU law, the power to review the jurisdiction of the issuing judicial authority. Any lack of jurisdiction does not constitute a ground for refusal laid down in Framework Decision 2002/584 and must be distinguished from a lack of status as a ‘judicial authority’ within the meaning of that framework decision. A refusal to execute a European arrest warrant cannot be based on a ground for refusal provided for solely under national law.

19 The referring court states, in the second place, that the Belgian courts do not have jurisdiction to interpret Spanish law. In the present case, those courts have also misinterpreted that law by relying, *inter alia*, on the opinions of the WGAD, which was not created under international law and whose opinions do not reflect the position of the United Nations Human Rights Council. Those courts have, however, failed to take account of several decisions of the referring court relating to its own jurisdiction and have failed to take account of the

confirmation of that jurisdiction by a judgment of 17 February 2021 of the Tribunal Constitucional (Constitutional Court, Spain).

20 In the third place, the referring court states that the Belgian courts should, before ruling on the execution of the European arrest warrant issued against Mr Puig Gordi, have requested supplementary information, pursuant to Article 15(2) of Framework Decision 2002/584.

21 In the fourth place, the existence of a serious risk of a breach of the fundamental rights of the person for whom a European arrest warrant has been issued is not a ground for refusal of execution set out in that framework decision. The Court has thus accepted such a ground for refusal, on the basis of Article 1(3) of that framework decision, only on condition that it is established that there are systemic or generalised deficiencies in the issuing Member State.

22 In those circumstances, the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does [Framework Decision 2002/584] enable the executing judicial authority to refuse surrender of the person sought via a European arrest warrant, based on grounds for refusal which are laid down in its national law but which are not provided for as such in [that] framework decision?

(2) If the answer to the previous question is affirmative, and for the purpose of ensuring the viability of a European arrest warrant and relying properly on the source of assistance provided for in Article 15(3) of [Framework Decision 2002/584]:

Must the issuing judicial authority investigate and examine the different laws of Member States in order to take into consideration any potential grounds for refusal of a European arrest warrant not provided for in [Framework Decision 2002/584]?

(3) In the light of the answers to the previous questions, [and] taking account of the fact that, pursuant to Article 6(1) of [Framework Decision 2002/584], the [jurisdiction] of the issuing judicial authority to issue a European arrest warrant is established pursuant to the law of the issuing State:

Must [Article 6(1) of Framework Decision 2002/584] be interpreted as meaning that the executing judicial authority is entitled to call into question the issuing judicial authority’s jurisdiction to try the criminal case in point and to refuse surrender on the grounds that that judicial authority is not competent to issue the [European arrest warrant]?

(4) As regards whether the executing judicial authority has the right to conduct a review of respect for the fundamental rights of the person sought in the issuing State:

(a) Does [Framework Decision 2002/584] enable the executing judicial authority to refuse to surrender the person sought on the grounds that it has identified a serious risk of infringement of that person’s fundamental rights in the issuing Member State, based on the report of a working group submitted to the national executing authority by the person sought?

(b) For the purposes of the previous question, does such a report constitute information that is objective, reliable, specific and properly updated in order to justify, in the light of the

case-law of the Court of Justice, the refusal to surrender the person sought based on a serious risk of infringement of his [or her] fundamental rights?

(c) If the answer to the previous question is affirmative, what evidence does EU law require in order for a Member State to be able to conclude that the serious risk of infringement of fundamental rights[,] which has been pleaded by the person sought and which constitutes grounds for refusal to execute the European arrest warrant[,] exists in the issuing Member State?

(5) Are the answers to the previous questions affected if the person whose surrender is sought has been able to put forward before the courts of the issuing Member State, including at a second level of jurisdiction, arguments concerning the lack of competence of the issuing judicial authority, the arrest warrant issued against him [or her] and the guarantee of his [or her] fundamental rights?

(6) Are the answers to the previous questions affected where the executing judicial authority refuses to execute a European arrest warrant on grounds not expressly laid down in [Framework Decision 2002/584], in particular because it has found that the issuing judicial authority lacks [jurisdiction] and that there is a serious risk of infringement of fundamental rights in the issuing State, and it does so without asking the issuing judicial authority for the specific additional information on which that decision depends?

(7) If it follows from the answers to the previous questions that, in the circumstances of the case, [Framework Decision 2002/584] precludes the surrender of a person based on those grounds for refusal:

Does [Framework Decision 2002/584] preclude the [Tribunal Supremo (Supreme Court)] from issuing a new European arrest warrant against the same person and addressed to the same Member State?

## **Procedure before the Court**

### ***The request for application of the expedited preliminary ruling procedure***

23 The referring court has requested that the present reference for a preliminary ruling be dealt with under an expedited preliminary ruling procedure pursuant to Article 105 of the Rules of Procedure of the Court of Justice.

24 In support of its request, that court states that the main proceedings are criminal in nature, that those proceedings have been stayed pending the Court's answer to the request for a preliminary ruling and that the requested persons are not subject to any measure involving deprivation of liberty.

25 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.

26 In the present case, the President of the Court decided, on 31 March 2021, after hearing the Judge-Rapporteur and the Advocate General, that there was no need to grant the request referred to in paragraph 23 of the present judgment.

27 It should be noted that the application of the expedited preliminary ruling procedure does not depend on the nature of the dispute in the main proceedings as such, but on exceptional circumstances particular to the case in question, which must establish that a ruling on those questions is a matter of exceptional urgency (see, to that effect, order of the President of the Court of 30 May 2018, *KN*, C-191/18, not published, EU:C:2018:383, paragraph 20 and the case-law cited).

28 As regards the case in the main proceedings, the Tribunal Supremo (Supreme Court) has not established that there are exceptional circumstances particular to that case which are capable of demonstrating exceptional urgency.

29 Thus, first, since the preliminary ruling procedure requires the proceedings pending before the referring court to be stayed pending the Court's answer, that suspensive effect inherent in the preliminary ruling procedure cannot justify a reference for a preliminary ruling being submitted to the expedited preliminary ruling procedure (see, to that effect, order of the President of the Court of 20 January 2014, *Nguyen and Schönherr*, C-2/14, not published, EU:C:2014:1999, paragraph 14 and the case-law cited).

30 Secondly, the fact that the persons subject to the main criminal proceedings are not currently in custody is a reason for not initiating the expedited preliminary ruling procedure under Article 105(1) of the Rules of Procedure (see, to that effect, order of the President of the Court of 20 September 2018, *OG and PF*, C-508/18 and C-509/18, not published, EU:C:2018:766, paragraph 13 and the case-law cited).

### ***The request to reopen the oral part of the procedure***

31 By document lodged at the Court Registry on 7 November 2022, Mr Puigdemont Casamajó, Mr Comín Oliveres, Mr Puig Gordi and Ms Ponsatí Obiols requested that the oral part of the procedure be reopened.

32 In support of that request, they submit that new facts and arguments which have not been debated between the parties are such as to have a decisive influence on the Court's decision in the present case.

33 More specifically, they refer to the signing of the order of the Vice-President of the Court of 24 May 2022, *Puigdemont i Casamajó and Others v Parliament* (C-629/21 P(R), EU:C:2022:413), an opinion of the United Nations Human Rights Committee of 30 August 2022, decisions given by Spanish courts, the fact that several of the defendants in the main criminal proceedings at issue were spied on by the Spanish authorities, positions adopted by members of the European Commission and a communication of the Central Electoral Commission. Moreover, they make a number of criticisms of the Advocate General's Opinion in the present case.

34 In that regard, it should be noted that, in accordance with Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient



information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not yet been debated.

35 In the present case, it must be noted, first, that the facts presented as new by Mr Puigdemont Casamajó, Mr Comín Oliveres, Mr Puig Gordi and Ms Ponsatí Obiols are not of such a nature as to be a decisive factor for the decision of the Court.

36 Those facts relate either to the individual situation of the defendants in the main criminal proceedings at issue or to alleged deficiencies in the Spanish judicial system. The Court has the task, in the context of the present preliminary ruling proceedings, not of assessing that individual situation or of determining whether the alleged deficiencies are established, but only of interpreting the relevant provisions of EU law.

37 As regards, secondly, the criticisms of the Advocate General's Opinion, it must be borne in mind that the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for the parties to submit observations in response to the Advocate General's Opinion (judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 41).

38 Furthermore, under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, is to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. The Court is not bound either by the Advocate General's conclusion or by the reasoning which led to that conclusion. Consequently, a party's disagreement with the Advocate General's Opinion, irrespective of the questions that he or she examines in his or her Opinion, cannot in itself constitute grounds justifying the reopening of the oral part of the procedure (judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, paragraph 42).

39 It is true that the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in accordance with Article 83 of its Rules of Procedure, in particular where it considers that it lacks sufficient information.

40 In the present case, however, the Court considers, after hearing the Advocate General, that it has, at the end of the written part of the procedure and the hearing held before it, all the information necessary to give a ruling, since the arguments put forward against the Advocate General's Opinion in the request that the oral part of the procedure be reopened have been extensively debated between the parties in question and the interested parties.

41 In the light of the foregoing, there is no need to grant that request.

## **Consideration of the questions referred for a preliminary ruling**

### ***Admissibility of the first to sixth questions referred***

42 Mr Puig Gordi, Mr Puigdemont Casamajó, Mr Comín Oliveres, Ms Ponsatí Obiols, Ms Rovira Vergés and Ms Gabriel Sabaté dispute the admissibility of some of the questions referred.

43 In the first place, Ms Ponsatí Obiols, Mr Puig Gordi, Mr Puigdemont Casamajó and Mr Comín Oliveres claim that the first to sixth questions, taken as a whole, are manifestly of no use for the purpose of conducting the main criminal proceedings.

44 First of all, those questions relate to the rules on the execution of European arrest warrants, with the result that the answers to those questions are of no interest to the referring court, since the latter has, in the main criminal proceedings, the status of issuing judicial authority. Although it is true that the Court agreed, in the judgment of 25 July 2018, *AY (Arrest Warrant – Witness)* (C-268/17, EU:C:2018:602), to answer questions relating to the execution of European arrest warrants referred by an issuing judicial authority, the circumstances of the case in the main proceedings can, however, be distinguished from those of the case which gave rise to that judgment. In the latter case, the executing judicial authority did not rule on the European arrest warrant at issue and the Court ruled on a substantive issue, relating to the principle *ne bis in idem*, which was of interest both to the issuing judicial authority and to the executing judicial authority.

45 Next, account should be taken of the fact that the decision of the cour d'appel de Bruxelles (Court of Appeal, Brussels) to refuse to execute the European arrest warrant in respect of Mr Puig Gordi is based not solely on an infringement of the right to a fair trial, but also on an infringement of the presumption of innocence. The first to sixth questions do not relate to the latter ground, which means that the Court's answers to those questions cannot, in any event, lead to the conclusion that that European arrest warrant should be executed.

46 Finally, three of the defendants in the main criminal proceedings enjoy immunity as Members of the European Parliament, with the result that they cannot be the subject of a European arrest warrant, which renders the first to sixth questions hypothetical in their case.

47 In the second place, Ms Ponsatí Obiols, Mr Puig Gordi, Mr Puigdemont Casamajó and Mr Comín Oliveres submit that the first question is, in any event, inadmissible on another ground. The purpose of that question is to obtain guidance from the Court on the interpretation of Framework Decision 2002/584 to enable an assessment to be made as to the compatibility of a Belgian legislative provision with that framework decision, whereas that provision will remain applicable in the Belgian legal order irrespective of the Court's answer, since that framework decision does not have direct effect.

48 In the third place, according to Ms Rovira Vergés and Ms Gabriel Sabaté, the fifth question has no connection with the main proceedings, since the defendants have not been able to challenge the jurisdiction of the referring court or to invoke their fundamental rights before the Spanish courts.

49 In the fourth place, Ms Rovira Vergés and Ms Gabriel Sabaté submit that the sixth question must be declared inadmissible, arguing, respectively, that, in the present case, the executing judicial authority relied on supplementary information provided by the Tribunal Supremo (Supreme Court) and that it is not for the Court of Justice to rule on whether it is appropriate for an executing judicial authority to make a request for supplementary information.

50 In those various respects, it should be noted, as a preliminary point, that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the main

proceedings have been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (see, to that effect, judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, paragraph 54 and the case-law cited).

51 The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C-709/20, EU:C:2021:602, paragraph 55 and the case-law cited).

52 As regards, in the first place, the argument that the first to sixth questions are of no use for the purpose of conducting the main criminal proceedings, it should be noted that the referring court states that the purpose of the request for a preliminary ruling is, inter alia, to enable that court to determine whether it may issue a new European arrest warrant against Mr Puig Gordi after the refusal of execution of a previous European arrest warrant issued against him and whether it must maintain or withdraw the European arrest warrants issued against other defendants in the main criminal proceedings at issue.

53 Those considerations justify that court being able, as the issuing judicial authority, to refer questions to the Court concerning the conditions for the execution of a European arrest warrant.

54 The observance of fundamental rights in the context of proceedings relating to a European arrest warrant falls primarily within the responsibility of the issuing Member State. Therefore, and given that the issuing of such a warrant may result in the arrest of the person subject to it, an issuing judicial authority must, in order to ensure observance of those rights, be able to refer questions to the Court for a preliminary ruling in order to determine whether to maintain or withdraw a European arrest warrant or whether it may issue such a warrant (see, to that effect, judgments of 25 July 2018, *AY (Arrest Warrant – Witness)*, C-268/17, EU:C:2018:602, paragraphs 28 and 29, and of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)*, C-649/19, EU:C:2021:75, paragraph 39).

55 Ms Ponsatí Obiols' argument that that option cannot be exercised in order to determine the conditions under which an executing judicial authority must, in order to ensure compliance with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), refuse to execute a European arrest warrant cannot succeed, in so far as the issuing judicial authority must, in order to comply with the principles of mutual trust and sincere cooperation, refrain from issuing or maintaining a European arrest warrant the execution of which should be refused, in particular in order to avoid an infringement of the second paragraph of Article 47 of the Charter (see, by analogy, judgment of 11 November 2021, *Gavanozov II*, C-852/19, EU:C:2021:902, paragraph 60).

56 Similarly, the fact, put forward by Ms Ponsatí Obiols, that an executing judicial authority has already refused to execute the European arrest warrant issued against Mr Puig

Gordi is not capable of establishing that the first to sixth questions bear no relation to the actual facts of the dispute in the main proceedings or its purpose, since the existence of such a refusal decision is, on the contrary, capable of justifying the referring court's uncertainty as to whether it may, without infringing EU law, issue a new European arrest warrant in order to obtain the surrender of Mr Puig Gordi and whether new measures must be adopted as regards the other defendants in the main criminal proceedings.

57 In those circumstances, given that the purpose of conducting such an examination is, ultimately, to clarify the powers and obligations of the issuing judicial authority, the fact that the referring court has not asked the Court about all the reasons given by the *cour d'appel de Bruxelles* (Court of Appeal, Brussels) for refusing to execute the European arrest warrant issued against Mr Puig Gordi is not sufficient to establish that the first to sixth questions bear no relation to the actual facts of the main proceedings or its purpose.

58 Moreover, the fact that three of the defendants in the main proceedings enjoy immunity in their capacity as Members of the European Parliament is not, in any event, capable of establishing that those questions are hypothetical, since other defendants in those proceedings, including Mr Puig Gordi, do not enjoy such immunity.

59 In the second place, as regards, more specifically, the alleged inadmissibility of the first question, it is sufficient to note that, in accordance with Article 267 TFEU, the Court has jurisdiction to give preliminary rulings on the interpretation of acts of the institutions of the European Union, irrespective of whether or not they have direct effect (see, to that effect, judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 89, and of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 56).

60 As regards, in the third place, the alleged inadmissibility of the fifth question, it must be noted that the arguments of Ms Rovira Vergés and Ms Gabriel Sabaté in that regard contradict the information provided by the referring court concerning the conduct, before the Spanish courts, of the proceedings relating to the requested persons.

61 In proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law (see, to that effect, judgment of 14 July 2022, *Volkswagen*, C-134/20, EU:C:2022:571, paragraph 36 and the case-law cited).

62 The same applies, in the fourth place, to the argument put forward by Ms Rovira Vergés that the sixth question should be declared inadmissible on the ground that the executing judicial authority relied, in the present case, on supplementary information provided by the Tribunal Supremo (Supreme Court), in its capacity as the issuing judicial authority. The Tribunal Supremo (Supreme Court) expressly stated, in the order for reference, that it had not provided such information to the executing judicial authority, but that one of its members had answered questions put by the Belgian Public Prosecutor in order to prepare his arguments at a hearing held in the course of the procedure for the execution of the European arrest warrants at issue in the main proceedings.

63 Moreover, contrary to Ms Gabriel Sabaté's contention, by its sixth question, the referring court asks the Court not whether it is appropriate for an executing judicial authority to make a request for supplementary information, but whether there is an obligation on that

judicial authority to make such a request before it can refuse to execute a European arrest warrant by invoking the lack of jurisdiction of the issuing judicial authority to issue a European arrest warrant and a serious risk of infringement of fundamental rights in the issuing Member State.

64 Such a question must be regarded as concerning the interpretation of EU law. Accordingly, the Court is required to give a ruling on that question.

65 It follows from the foregoing that the first to sixth questions are admissible.

### ***Substance***

#### *The first question*

66 By its first question, the referring court asks, in essence, whether Framework Decision 2002/584 must be interpreted as meaning that an executing judicial authority has the power to refuse to execute a European arrest warrant on the basis of a ground for non-execution which stems not from that framework decision, but solely from the law of the executing Member State.

67 It follows from settled case-law of the Court that Framework Decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 37 and the case-law cited).

68 To that end, it follows from that framework decision, in particular from Article 1(2) thereof, that execution of the European arrest warrant constitutes the rule, whereas refusal to execute is intended to be an exception which must be interpreted strictly (see, to that effect, judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 46 and the case-law cited).

69 In that regard, it should be noted, in the first place, that the principle of mutual recognition proceeds from the assumption that only European arrest warrants, within the meaning of Article 1(1) of that framework decision, 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 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 38 and the case-law cited).

70 In the second place, the executing judicial authority must not give effect to a European arrest warrant which does not meet the minimum requirements on which its validity depends, including those laid down in Article 8 of Framework Decision 2002/584 (see, to that effect, judgments of 6 December 2018, *IK (Enforcement of an additional sentence)*, C-551/18 PPU, EU:C:2018:991, paragraph 43, and of 9 October 2019, *NJ (Public Prosecutor’s Office, Vienna)*, C-489/19 PPU, EU:C:2019:849, paragraph 29).

71 In the third place, the executing judicial authorities must or may refuse to execute a European arrest warrant on the grounds for non-execution set out in Articles 3, 4 and 4a of that framework decision (see, to that effect, judgment of 27 May 2019, *PF (Prosecutor General of Lithuania)*, C-509/18, EU:C:2019:457, paragraph 24 and the case-law cited).

72 In the fourth place, the existence of a risk of infringement of the fundamental rights set out in Articles 4 and 47 of the Charter is capable of permitting the executing judicial authority to refrain, exceptionally and following an appropriate examination, from giving effect to a European arrest warrant on the basis of Article 1(3) of that framework decision (see, to that effect, judgments of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857, paragraph 83, and of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 46 and the case-law cited).

73 It must therefore be held that each of the grounds relied on in the Court's case-law as requiring or authorising the executing judicial authority not to give effect to a European arrest warrant stems from Framework Decision 2002/584.

74 Furthermore, it follows from the foregoing that those grounds have a strictly limited scope and that they therefore allow a refusal to execute a European arrest warrant only in exceptional cases.

75 To accept that it is permissible for each Member State to add other grounds to those grounds enabling the executing judicial authority not to give effect to a European arrest warrant would likely, first, undermine the uniform application of Framework Decision 2002/584, by making its application subject to rules of national law, and, second, render ineffective the obligation to execute European arrest warrants laid down in Article 1(2) of that framework decision, by permitting, in practice, each Member State freely to determine the scope of that obligation on its executing judicial authorities.

76 Such an interpretation would impede the proper operation of the simplified and effective system for the surrender of persons convicted or suspected of having infringed criminal law established by that framework decision and, therefore, would run counter to the objective it pursues, referred to in paragraph 67 above.

77 In the present case, it is apparent from the order for reference that the Belgian courts refused to execute the European arrest warrant concerning Mr Puig Gordi on the basis of Article 4(5) of the Law of 19 December 2003 on the European arrest warrant, which provides that the execution of a European arrest warrant is to be refused if there are serious reasons for believing that that execution would have the effect of infringing the fundamental rights of the person concerned enshrined in EU law.

78 Such a provision, in so far as it is interpreted as having the same scope as Article 1(3) of Framework Decision 2002/584, allows a refusal to execute a European arrest warrant only in the context referred to in paragraph 72 of the present judgment and cannot therefore be regarded as establishing a ground for non-execution which does not stem from that framework decision.

79 In the light of the foregoing, the answer to the first question is that Framework Decision 2002/584 must be interpreted as meaning that an executing judicial authority does not have

the power to refuse to execute a European arrest warrant on the basis of a ground for non-execution which arises not from that framework decision but solely from the law of the executing Member State. However, that judicial authority may apply a national provision which provides that the execution of a European arrest warrant is to be refused where that execution would lead to an infringement of a fundamental right enshrined in EU law, provided that the scope of that provision does not go beyond the scope of Article 1(3) of that framework decision as interpreted by the Court.

*The second question*

80 In view of the answer given to the first question, there is no need to answer the second question.

*The third question*

81 By its third question, the referring court asks, in essence, whether Article 1(1) and (2) and Article 6(1) of Framework Decision 2002/584 must be interpreted as meaning that the executing judicial authority may verify whether a European arrest warrant has been issued by a judicial authority which had jurisdiction for that purpose and refuse to execute that European arrest warrant where it considers that that is not the case.

82 As stated in paragraph 69 of the present judgment, it follows from Article 1(1) and (2) of Framework Decision 2002/584 that only European arrest warrants issued by a judicial authority, within the meaning of Article 6(1) of that framework decision, are to be executed.

83 Article 6(1) of Framework Decision 2002/584 provides that the issuing judicial authority is to 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.

84 It follows from the Court's case-law that the concept of 'judicial authority' within the meaning of that provision requires, throughout the European Union, an autonomous and uniform interpretation (see, to that effect, judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices, Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 49) and that that concept implies, inter alia, 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 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 38).

85 Although, consequently, it is for the executing judicial authority to ensure, before executing a European arrest warrant, that it has indeed been issued by a judicial authority within the meaning of Article 6(1) of Framework Decision 2002/584, the executing judicial authority cannot, however, verify, under that provision, that the issuing judicial authority has, in the light of the legal rules of the issuing Member State, jurisdiction to issue a European arrest warrant.

86 Whilst the EU legislature enshrined an autonomous and uniform concept of 'judicial authority' within the meaning of Framework Decision 2002/584, it nevertheless entrusted each Member State with the designation, within the framework of its procedural autonomy, of the judicial authorities competent to issue a European arrest warrant (see, to that effect,

judgments of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 31, and of 27 May 2019, *OG and PI (Public Prosecutor's Offices, Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 48).

87 Since that designation thus derives exclusively, on account of that choice made by the EU legislature, from the law of each Member State, it is for the judicial authorities of the issuing Member State to assess, within the context defined in Article 6(1) of Framework Decision 2002/584 and, where appropriate, subject to review by higher national courts, their jurisdiction, under the law of that Member State, to issue a European arrest warrant.

88 As the Advocate General observed in point 74 of his Opinion, to consider that the assessment of its own jurisdiction by the issuing judicial authority may subsequently be reviewed by the executing judicial authority would amount to conferring on the latter authority a general function of reviewing the procedural decisions adopted in the issuing Member State, which would run counter to the principle of mutual recognition, which, according to recital 6 of Framework Decision 2002/584, is the cornerstone of judicial cooperation.

89 Consequently, the answer to the third question is that Article 1(1) and (2) and Article 6(1) of Framework Decision 2002/584 must be interpreted as meaning that the executing judicial authority may not verify whether a European arrest warrant has been issued by a judicial authority which had jurisdiction for that purpose and refuse to execute that European arrest warrant where it considers that that is not the case.

*Part (c) of the fourth question, and the fifth question*

90 As a preliminary point, it should be noted, first, that part (c) of the fourth question concerns, in general terms, the information that must be available to the executing judicial authority in order to refuse to execute a European arrest warrant on the ground that that execution would give rise to a risk of infringement of fundamental rights in the issuing Member State. That justifies dealing with that subquestion first.

91 Secondly, despite the general wording of that subquestion, it is apparent from the order for reference that the Tribunal Supremo (Supreme Court) is unsure, more specifically, as to the relevance, for the purposes of that execution, of an alleged risk that the person for whom that European arrest warrant has been issued may, following his or her surrender to that Member State, be exposed to an infringement of the second paragraph of Article 47 of the Charter, in that that person would be tried by a court lacking jurisdiction for that purpose.

92 In those circumstances, it must be held that, by part (c) of its fourth question, and its fifth question, which it is appropriate to deal with together, the referring court asks, in essence, whether Article 1(3) of Framework Decision 2002/584, read in conjunction with the second paragraph of Article 47 of the Charter, must be interpreted as meaning that the executing judicial authority called upon to decide on the surrender of a person for whom a European arrest warrant has been issued may refuse to execute that warrant where it considers that that person is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction for that purpose, when that person could, before the courts of that Member State, have invoked his or her fundamental rights in order to challenge the jurisdiction of the issuing judicial authority and that European arrest warrant.



93 It is important to recall 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 (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 40 and the case-law cited).

94 Thus, when Member States implement EU law, they may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but also, save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the European Union (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 41 and the case-law cited).

95 That said, the high level of trust between Member States on which the European arrest warrant mechanism is based is thus founded on the premiss that the criminal courts of the other Member States which, following execution of a European arrest warrant, will have to conduct the criminal procedure for the purpose of prosecution, or of enforcement of a custodial sentence or detention order, and the substantive criminal proceedings, meet the requirements inherent in the fundamental right to a fair trial enshrined in the second paragraph of Article 47 of the Charter. That fundamental right 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 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 45 and the case-law cited).

96 In those circumstances, while it is primarily 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 that mechanism to ensure, subject to final review by the Court, that the requirements inherent in that fundamental right are safeguarded by refraining from any measure capable of undermining it, the existence of a real risk that the person in respect of whom a European arrest warrant has been issued would, if surrendered to the issuing judicial authority, suffer a breach of that fundamental right is capable of permitting, as stated in paragraph 72 of the present judgment, the executing judicial authority to refrain, exceptionally, from giving effect to that European arrest warrant on the basis of Article 1(3) of Framework Decision 2002/584 (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 46 and the case-law cited).

97 In that regard, it follows from the Court's case-law that, where the executing judicial authority called upon to decide on the surrender of a person in respect of whom a European arrest warrant has been issued has evidence indicating that there is a real risk of infringement 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 in the operation of the judicial system of the issuing Member State, that authority must verify, specifically and precisely, whether, in the light of that person's personal situation, the nature of the offence for which he or she is sought and the factual context in which the European arrest warrant was issued, there are substantial grounds for believing that that person will run such a risk in the event of being surrendered to that Member State (see, to that effect, judgments of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 52, and of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 50).

98 As regards the applicability of that two-step examination on the ground of the refusal to execute a European arrest warrant which is the subject of part (c) of the fourth question, it is important to note that the executing judicial authority is required, inter alia, to carry out such an examination in order to assess whether, if the person concerned is surrendered to the issuing Member State, that person runs a real risk of infringement of his or her fundamental right to a fair trial before a tribunal previously established by law, enshrined in the second paragraph of Article 47 of the Charter (see, to that effect, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 66).

99 It follows from the case-law of the ECtHR relating to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, which must be taken into account when interpreting Article 47 of the Charter (see, to that effect, judgment of 26 October 2021, *Openbaar Ministerie (Right to be heard by the executing judicial authority)*, C-428/21 PPU and C-429/21 PPU, EU:C:2021:876, paragraph 64), that the jurisdiction of a court to hear a case, under the relevant national rules, is part of the requirement to have a 'tribunal established by law', within the meaning of Article 6(1) of that convention (see, to that effect, ECtHR, 20 July 2006, *Sokurenko and Strygun v. Ukraine*, CE:ECHR:2006:0720JUD002945804, §§ 26 to 29, and ECtHR, 1 December 2020, *Guðmundur Andri Ástráðsson v. Iceland*, CE:ECHR:2020:1201JUD002637418, §§ 217 and 223).

100 In particular, a national supreme court which decides a criminal case at first and last instance without having an express legal basis giving it jurisdiction to try all the defendants cannot be regarded as a tribunal established by law within the meaning of Article 6(1) of that convention (see, to that effect, ECtHR, 22 June 2000, *Coëme and Others v. Belgium*, CE:ECHR:2000:0622JUD003249296, §§ 107 to 110, and ECtHR, 2 June 2005, *Claes and Others v. Belgium*, CE:ECHR:2005:0602JUD004682599, §§ 41 to 44).

101 In those circumstances, although the executing judicial authority may not, as follows from the answer to the third question, verify the jurisdiction of the issuing judicial authority, it is, however, the responsibility of the executing judicial authority, where the person for whom a European arrest warrant has been issued alleges that he or she will, following his or her surrender to the issuing Member State, be exposed to an infringement of the second paragraph of Article 47 of the Charter, in so far as he or she would be tried there by a court that lacks jurisdiction for that purpose, to assess the merits of that allegation in the context of the two-step examination referred to in paragraph 97 of the present judgment.

102 As regards the content of that examination, it must be noted that, as a first step, the judicial authority executing the European arrest warrant in question must determine whether there is objective, reliable, specific and properly updated information to demonstrate that there is a real risk of infringement, in the issuing Member State, of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter, connected in particular with a failure to comply with the requirement for a tribunal established by law, on account of systemic or generalised deficiencies in that Member State or deficiencies affecting an objectively identifiable group of persons to which the person concerned belongs (see, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 89, and of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 67).

103 In the context of allegations relating to the risk, for a person for whom a European arrest warrant has been issued, of being tried by a court lacking jurisdiction for that purpose, the executing judicial authority must, in order to determine whether such deficiencies are established, carry out an overall assessment of the operation of the judicial system of the issuing Member State in the light of the requirement for a tribunal established by law (see, to that effect, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 77). That judicial authority must take the view that those deficiencies are established if it is apparent from that overall assessment that the defendants are generally deprived, in that Member State, of an effective legal remedy enabling the jurisdiction of the criminal court called upon to try them to be reviewed, in the form of an examination of its own jurisdiction by that court or an action available before another court.

104 In that regard, in so far as allegations relating to the lack of jurisdiction of a court of the issuing Member State to try the person for whom a European arrest warrant has been issued do not overlap with a challenge to the jurisdiction of the issuing judicial authority or to the conditions for issuing that European arrest warrant, the fact that that jurisdiction or those conditions may be challenged, or have actually been challenged in the proceedings in question, before the courts of that Member State cannot, as such, be regarded as decisive for the purposes of ruling on the execution of that European arrest warrant.

105 However, the course of proceedings relating to a European arrest warrant before the courts of the issuing Member State must, in so far as it gives indications as to the practices of those courts and their interpretation of the relevant national rules, be taken into consideration by the executing judicial authority in its overall assessment of the likely course of the criminal proceedings following the surrender of a person for whom a European arrest warrant has been issued (see, by analogy, judgment of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857, paragraph 80 and the case-law cited), in particular in a situation such as that in the main proceedings where, under the law of that Member State, the same court is, in principle, called on to carry out the functions of an issuing judicial authority and of a court giving judgment.

106 In the context of a second step, the executing judicial authority must determine, specifically and precisely, to what extent the deficiencies identified in the first step of the examination referred to in paragraph 97 of the present judgment are liable to have an impact on the proceedings to which the person for whom a European arrest warrant has been issued will be subject and whether, having regard to that person's personal situation, the nature of the

offence for which he or she is prosecuted and the factual context in which that arrest warrant was issued, there are substantial grounds for believing that that person will run a real risk of infringement of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter if he or she is surrendered to that Member State (see, to that effect, judgments of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 55, and of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 53).

107 Where that risk arises, according to the allegations of the person concerned, from the fact that, in the event of being surrendered, he or she could be tried by a court lacking jurisdiction for that purpose, the existence of such a risk can be established only if, in the light of the rules on jurisdiction and judicial procedure applicable in the issuing Member State, the court that will likely be called upon to hear the proceedings to which that person will be subject in that Member State manifestly lacks jurisdiction.

108 Although such a lack of jurisdiction would be such as to raise legitimate concerns, in particular as regards the impartiality of the court concerned, and to hinder the surrender of that person, a difference as to the precise scope of those rules between the judicial authorities of the issuing Member State and the judicial authorities of the executing Member State cannot validly form the basis for such a finding.

109 Finally, since it is apparent from the order for reference that the Tribunal Supremo (Supreme Court) is unsure, *inter alia*, whether an executing judicial authority may refuse to execute a European arrest warrant on the ground of a risk of infringement of the second paragraph of Article 47 of the Charter, without having found that there are systemic or generalised deficiencies in the issuing Member State, it should be noted that the two steps of the examination referred to in paragraph 97 of the present judgment involve an analysis of the information obtained on the basis of different criteria, with the result that those steps cannot overlap with one another (see, to that effect, judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 56).

110 It follows, in that regard, from the Court's case-law, that a finding, by the executing judicial authority, that there are factors demonstrating systemic or generalised deficiencies in the operation of the judicial system of the issuing Member State cannot justify that judicial authority's refusal to execute a European arrest warrant without having carried out the second step of the examination referred to in paragraph 97 of the present judgment (see, to that effect, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 81).

111 Similarly, where a person for whom a European arrest warrant has been issued claims that he or she will be exposed to a risk of infringement of the second paragraph of Article 47 of the Charter on the ground that he or she will be tried by a court of the issuing Member State which does not have jurisdiction to do so, but the executing judicial authority considers that the information at its disposal does not constitute objective, reliable, specific and properly updated information to demonstrate the existence of systemic or generalised deficiencies in the operation of the judicial system of that Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which that person belongs, that

authority cannot refuse to execute that European arrest warrant on the ground alleged by that person.

112 It is important to point out that, where the legal system of the issuing Member State provides for legal remedies enabling a review of the jurisdiction of the court called upon to try a person surrendered under a European arrest warrant, in the form of an examination of its own jurisdiction by that court or an action available before another court, the risk that that person may be tried by a court of that Member State which does not have jurisdiction for that purpose may, in principle, be ruled out by that person's exercise of those legal remedies.

113 Furthermore, in the light of the nature of the infringement of the second paragraph of Article 47 of the Charter invoked by a person for whom a European arrest warrant has been issued and who is in a situation such as that referred to in part (c) of the fourth question, it must be held that the exercise of such legal remedies must make it possible, provided that they are effective, to avoid the very occurrence of that infringement or, in any event, to avoid irreparable damage arising from that infringement.

114 In the absence of objective, reliable, specific and properly updated information capable of demonstrating that there are systemic or generalised deficiencies in the operation of the judicial system of the issuing Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which the person concerned belongs, there is no valid reason for the executing judicial authority to presume that the legal remedies referred to in paragraph 112 of the present judgment are lacking or that they are ineffective, since that judicial authority is, on the contrary, required, as the Advocate General stated in point 116 of his Opinion, to base its analysis on the existence and effectiveness of those legal remedies, in accordance with the principle of mutual trust.

115 The trust that must thus be conferred on the courts of the issuing Member State is, moreover, the corollary of the principle, referred to in paragraph 54 of the present judgment, that the guarantee of observance of the fundamental rights of a person for whom a European arrest warrant has been issued falls primarily within the responsibility of that Member State.

116 In the absence of such trust, once allegations such as those at issue in the main proceedings have been brought to the attention of the executing judicial authority, it would be led to review the application, by the courts of the issuing Member State, of their own rules on jurisdiction and judicial procedure in an individual case, which, as stated in paragraph 88 of the present judgment, would run counter to the principle of mutual recognition underlying Framework Decision 2002/584. It follows from the Court's settled case-law that that framework decision, read in the light of the provisions of the Charter, cannot be interpreted in such a way as to call into question the effectiveness of the system of judicial cooperation between the Member States (see, to that effect, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 47).

117 The foregoing interpretation thus guarantees that the examination, by the executing judicial authority, of the observance, by the courts of the issuing Member State, of the right laid down in the second paragraph of Article 47 of the Charter, can, in accordance with the Court's case-law, take place only in exceptional circumstances (see, to that effect, Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 191).

118 That interpretation is also such as to ensure that account is taken, in addition to the guarantees which, for the person for whom a European arrest warrant has been issued, stem from Article 47 of the Charter, of other interests, such as the need to observe, where appropriate, the fundamental rights of the victims of the offences concerned (see, by analogy, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraphs 60 to 63).

119 In the light of the foregoing, the answer to part (c) of the fourth question, and to the fifth question, is that Article 1(3) of Framework Decision 2002/584, read in conjunction with the second paragraph of Article 47 of the Charter, must be interpreted as meaning that the executing judicial authority called upon to decide on the surrender of a person for whom a European arrest warrant has been issued may not refuse to execute that warrant on the ground that that person is at risk, following his or her surrender to the issuing Member State, of being tried by a court which lacks jurisdiction for that purpose unless,

– first, that judicial authority has objective, reliable, specific and properly updated information showing that there are systemic or generalised deficiencies in the operation of the judicial system of the issuing Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which the person concerned belongs, in the light of the requirement for a tribunal established by law, which mean that the individuals concerned are generally deprived, in that Member State, of an effective legal remedy enabling a review of the jurisdiction of the criminal court called upon to try them, and

– secondly, that judicial authority finds that, in the particular circumstances of the case in question, there are substantial grounds for believing that, taking into account, inter alia, the information that is provided by the person for whom that European arrest warrant has been issued and that relates to his or her personal situation, to the nature of the offence for which that person is prosecuted, to the factual context in which that European arrest warrant was issued or to any other relevant circumstance, the court which is likely to be called upon to hear the proceedings to which that person will be subject in the issuing Member State manifestly lacks jurisdiction for that purpose.

120 The fact that the person concerned was able, before the courts of the issuing Member State, to rely on his or her fundamental rights in order to challenge the jurisdiction of the issuing judicial authority and the European arrest warrant issued for him or her is of no decisive importance in that regard.

#### *Parts (a) and (b) of the fourth question*

121 By parts (a) and (b) of its fourth question, the referring court asks, in essence, whether Article 1(3) of Framework Decision 2002/584, read in conjunction with the second paragraph of Article 47 of the Charter, must be interpreted as meaning that, in a situation where a person for whom a European arrest warrant has been issued alleges that he or she is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction for that purpose, the existence of a WGAD report may, in itself, be justification for the executing judicial authority to refuse to execute that European arrest warrant or, failing that, may be taken into account by that judicial authority in order to decide whether it is necessary to refuse to execute that European arrest warrant on the ground alleged by that person.

122 It follows from the answer given to part (c) of the fourth question that the execution of a European arrest warrant may be refused on the ground that the person to whom it relates is at risk, following his or her surrender to the issuing Member State, of being tried by a court which lacks jurisdiction for that purpose only in so far as the executing judicial authority concludes, first, that there is a real risk of an infringement, in that Member State, of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter as a result of systemic or generalised deficiencies in the operation of the judicial system of that Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which that person belongs and, second, that the court likely to be called upon to hear the proceedings to which that person will be subject in that Member State manifestly lacks jurisdiction.

123 Since such a conclusion must be based both on objective, reliable, specific and properly updated information relating to the operation of the judicial system of the issuing Member State and on a specific and precise analysis of the individual situation of the requested person, a WGAD report which, according to the information provided by the referring court, does not directly relate to that situation cannot suffice to justify a refusal to execute a European arrest warrant concerning that person.

124 Nevertheless, it follows from the Court's case-law that the objective, reliable, specific and properly updated information on which the executing judicial authority must rely in order to complete the first step of the examination referred to in paragraph 97 of the present judgment may be obtained from, inter alia, judgments of international courts, such as ECtHR judgments, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the United Nations (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 89).

125 Therefore, given that the WGAD's mandate stems from Resolutions 15/18, 20/16 and 33/30 of the United Nations Human Rights Council, which itself was created by Resolution 60/251 of the United Nations General Assembly of 15 March 2006, a report drawn up by the WGAD may be one of the factors that may be taken into account in the first step of that examination, however the executing judicial authority is not bound by the conclusions set out in that report.

126 Consequently, the answer to parts (a) and (b) of the fourth question is that Article 1(3) of Framework Decision 2002/584, read in conjunction with the second paragraph of Article 47 of the Charter, must be interpreted as meaning that, in a situation where a person for whom a European arrest warrant has been issued alleges that he or she is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction for that purpose, the existence of a WGAD report which does not directly relate to that person's situation may not, in itself, be justification for the executing judicial authority to refuse to execute that European arrest warrant, but such a report may, however, be taken into account by that judicial authority, among other elements, in order to assess whether there are systemic or generalised deficiencies in the operation of the judicial system of that Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which that person belongs.

*The sixth question*

127 As a preliminary point, it should be noted that the sixth question concerns the possibility of refusing to execute a European arrest warrant on the ground either that the issuing judicial authority lacks jurisdiction to issue that European arrest warrant, or that the person for whom that warrant has been issued is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction for that purpose.

128 Since it follows from the answer given to the third question that the first of those two grounds cannot, in any event, justify a refusal to execute a European arrest warrant, it is necessary to examine the sixth question only in so far as it relates to the second of those grounds.

129 Accordingly, it must be held that, by that question, the referring court asks, in essence, whether Article 15(2) of Framework Decision 2002/584 must be interpreted as precluding the executing judicial authority from refusing to execute a European arrest warrant on the ground that the person for whom that warrant has been issued is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction for that purpose, without having first requested that the issuing judicial authority provide supplementary information.

130 Article 15(2) of Framework Decision 2002/584 provides that, 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 is to request that the necessary supplementary information be furnished as a matter of urgency.

131 It also follows from the Court's case-law that, in order, in particular, to ensure that the operation of the European arrest warrant is not brought to a standstill, the duty of sincere cooperation laid down in the first subparagraph of Article 4(3) TEU must inform the dialogue between the executing judicial authorities and the issuing ones. It follows from the principle of sincere cooperation, *inter alia*, that the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 48 and the case-law cited).

132 From that perspective, the issuing and executing judicial authorities must, in order to ensure effective cooperation in criminal matters, make full use of the instruments provided for, *inter alia*, in Article 8(1) and Article 15 of Framework Decision 2002/584 in order to foster the mutual trust on which that cooperation is based (see, to that effect, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 49 and the case-law cited).

133 In that context, it must be noted that, as follows from paragraph 107 of the present judgment, the executing judicial authority may refuse to execute a European arrest warrant on the ground that the person to whom it relates is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction for that purpose only on condition, *inter alia*, that that executing judicial authority has found, in the light of the rules on jurisdiction and judicial procedure applicable in that Member State, that the court that will likely be called upon to hear the proceedings to which that person will be subject in that Member State manifestly lacks jurisdiction.



134 Since such a finding is necessarily based on an analysis of the law of the issuing Member State, the executing judicial authority cannot, without infringing the principle of sincere cooperation, make that finding without having first requested that the issuing judicial authority provide information concerning those rules.

135 It must nevertheless be stated that it follows from the answer to part (c) of the fourth question that such a request is not justified where the executing judicial authority considers that it does not have objective, reliable, specific and properly updated information to establish that there are systemic or generalised deficiencies in the operation of the judicial system of that Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which the person concerned belongs. That judicial authority cannot, in such a case, refuse to execute a European arrest warrant on the ground that the court that will likely be called upon to try that person manifestly lacks jurisdiction.

136 Consequently, the answer to the sixth question is that Article 15(2) of Framework Decision 2002/584 must be interpreted as precluding the executing judicial authority from refusing to execute a European arrest warrant on the ground that the person for whom that warrant has been issued is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction for that purpose, without having first requested that the issuing judicial authority provide supplementary information.

#### *The seventh question*

137 The referring court states that it asks the Court to answer the seventh question if it follows from the answers to the first to sixth questions that, in the circumstances of the case in the main proceedings, Framework Decision 2002/584 precludes a refusal to surrender a person on the basis of the grounds referred to in those questions.

138 Since Article 267 TFEU does not empower the Court to apply rules of EU law to a particular case (see, to that effect, judgment of 14 May 2020, *Bouygues travaux publics and Others*, C-17/19, EU:C:2020:379, paragraph 51 and the case-law cited), it is necessary, for the sake of completeness, to answer the seventh question, without prejudice to the assessment, by the competent courts, of the possibility of executing the European arrest warrants issued by the referring court in the main proceedings.

139 By that seventh question, the referring court asks, in essence, whether Framework Decision 2002/584 must be interpreted as precluding the issuing of several successive European arrest warrants against a requested person with a view to obtaining his or her surrender by a Member State after the execution of a first European arrest warrant concerning that person has been refused by that Member State.

140 In that regard, it should be noted at the outset that no provision of Framework Decision 2002/584 excludes the issuing of several successive European arrest warrants against a person, including where the execution of a first European arrest warrant concerning that person has been refused.

141 Furthermore, such an issuing of a European arrest warrant may prove necessary, in particular after the factors which prevented the execution of a previous European arrest warrant have been ruled out or, where the decision refusing to execute that European arrest warrant was not consistent with EU law, in order to conduct the procedure for the surrender of

a requested person to its conclusion and thus to promote, as the Advocate General stated in point 137 of his Opinion, the attainment of the objective of combating impunity pursued by that framework decision.

142 However, first, it follows from the Court's case-law that the issuing of a European arrest warrant the execution of which would lead to an infringement of Article 47 of the Charter and should, in the circumstances set out in the Court's settled case-law, be refused by the executing judicial authority is not compatible with the principles of mutual trust and sincere cooperation (see, by analogy, judgment of 11 November 2021, *Gavanozov II*, C-852/19, EU:C:2021:902, paragraph 60).

143 Accordingly, an issuing judicial authority cannot, in the absence of a change in circumstances, issue a new European arrest warrant against a person after an executing judicial authority has refused to give effect to a previous European arrest warrant issued against that person, in accordance with the requirements that were imposed on it by Article 1(3) of Framework Decision 2002/584, read in conjunction with the second paragraph of Article 47 of the Charter.

144 Secondly, since, as stated in paragraph 54 of the present judgment, the issuing of a European arrest warrant may result in the arrest of the person for whom it has been issued and, therefore, may prejudice that person's individual freedom, it is for the judicial authority that is considering issuing a European arrest warrant to examine whether, in the light of the particular circumstances of the case, it is proportionate to issue that warrant (see, to that effect, judgments of 27 May 2019, *PF (Prosecutor General of Lithuania)*, C-509/18, EU:C:2019:457, paragraph 49, and of 13 January 2021, *MM*, C-414/20 PPU, EU:C:2021:4, paragraph 64).

145 In the context of such an examination, it is for that judicial authority, inter alia, to take into account the nature and gravity of the offence for which the requested person is being prosecuted, the consequences for that person of the European arrest warrant or warrants previously issued against him or her, or the prospects of execution of any new European arrest warrant.

146 In the light of the foregoing, the answer to the seventh question is that Framework Decision 2002/584 must be interpreted as not precluding the issuing of several successive European arrest warrants against a requested person with a view to obtaining his or her surrender by a Member State after the execution of a first European arrest warrant concerning that person has been refused by that Member State, provided that the execution of a new European arrest warrant does not result in an infringement of Article 1(3) of that framework decision and provided that the issuing of the latter European arrest warrant is proportionate.

### **Costs**

147 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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:

**1. 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 an executing judicial authority does not have the power to refuse to execute a European arrest warrant on the basis of a ground for non-execution which arises not from Framework Decision 2002/584, as amended, but solely from the law of the executing Member State. However, that judicial authority may apply a national provision which provides that the execution of a European arrest warrant is to be refused where that execution would lead to an infringement of a fundamental right enshrined in EU law, provided that the scope of that provision does not go beyond the scope of Article 1(3) of Framework Decision 2002/584, as amended, as interpreted by the Court of Justice of the European Union.**

**2. Article 1(1) and (2) and Article 6(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299,**

**must be interpreted as meaning that the executing judicial authority may not verify whether a European arrest warrant has been issued by a judicial authority which had jurisdiction for that purpose and refuse to execute that European arrest warrant where it considers that that is not the case.**

**3. Article 1(3) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in conjunction with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union,**

**must be interpreted as meaning that the executing judicial authority called upon to decide on the surrender of a person for whom a European arrest warrant has been issued may not refuse to execute that warrant on the ground that that person is at risk, following his or her surrender to the issuing Member State, of being tried by a court which lacks jurisdiction for that purpose unless,**

**– first, that judicial authority has objective, reliable, specific and properly updated information showing that there are systemic or generalised deficiencies in the operation of the judicial system of the issuing Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which the person concerned belongs, in the light of the requirement for a tribunal established by law, which mean that the individuals concerned are generally deprived, in that Member State, of an effective legal remedy enabling a review of the jurisdiction of the criminal court called upon to try them, and**

**– secondly, that judicial authority finds that, in the particular circumstances of the case in question, there are substantial grounds for believing that, taking into account, inter alia, the information that is provided by the person for whom that European arrest warrant has been issued and that relates to his or her personal situation, to the nature of the offence for which that person is prosecuted, to the factual context in which that European arrest warrant was issued or to any other relevant circumstance, the court which is likely to be called upon to hear the proceedings to which that person will be subject in the issuing Member State manifestly lacks jurisdiction for that purpose.**

**The fact that the person concerned was able, before the courts of the issuing Member State, to rely on his or her fundamental rights in order to challenge the jurisdiction of the issuing judicial authority and the European arrest warrant issued for him or her is of no decisive importance in that regard.**

**4. Article 1(3) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in conjunction with the second paragraph of Article 47 of the Charter of Fundamental Rights,**

**must be interpreted as meaning that in a situation where a person for whom a European arrest warrant has been issued alleges that he or she is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction for that purpose, the existence of a report by the Working Group on Arbitrary Detention which does not directly relate to that person's situation may not, in itself, be justification for the executing judicial authority to refuse to execute that European arrest warrant, but such a report may, however, be taken into account by that judicial authority, among other elements, in order to assess whether there are systemic or generalised deficiencies in the operation of the judicial system of that Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which that person belongs.**

**5. Article 15(2) of Framework Decision 2002/584, as amended by Framework Decision 2009/299,**

**must be interpreted as precluding the executing judicial authority from refusing to execute a European arrest warrant on the ground that the person for whom that warrant has been issued is at risk, following his or her surrender to the issuing Member State, of being tried by a court lacking jurisdiction for that purpose, without having first requested that the issuing judicial authority provide supplementary information.**

**6. Framework Decision 2002/584, as amended by Framework Decision 2009/299,**

**must be interpreted as not precluding the issuing of several successive European arrest warrants against a requested person with a view to obtaining his or her surrender by a Member State after the execution of a first European arrest warrant concerning that person has been refused by that Member State, provided that the execution of a new European arrest warrant does not result in an infringement of Article 1(3) of Framework Decision 2002/584, as amended, and provided that the issuing of the latter European arrest warrant is proportionate.**

[Signatures]

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\* Language of the case: Spanish.