Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

22 February 2022 *

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 1(3) – Surrender procedures between Member States – Conditions for execution – Charter of Fundamental Rights of the European Union – Second paragraph of Article 47 – Fundamental right to a fair trial before an independent and impartial tribunal previously established by law – Systemic or generalised deficiencies – Two-step examination – Criteria for application – Obligation of the executing judicial authority to determine, specifically and precisely, whether there are substantial grounds for believing that the person in respect of whom a European arrest warrant has been issued, if surrendered, runs a real risk of breach of his or her fundamental right to a fair trial before an independent and impartial tribunal previously established by law)

In Joined Cases C-562/21 PPU and C-563/21 PPU,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decisions of 14 September 2021, received at the Court on 14 September 2021, in proceedings relating to the execution of European arrest warrants issued against

X (C-562/21 PPU)

Y (C-563/21 PPU)

THE COURT (Grand Chamber),

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

Advocate General: A. Rantos,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 November 2021,

after considering the observations submitted on behalf of:

– X, by N.M. Delsing and W.R. Jonk, advocaten,

* Language of the case: Dutch.

– Openbaar Ministerie, by C.L.E. McGivern and K. van der Schaft,

– the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,

– Ireland, by J. Quaney, acting as Agent, and R. Kennedy, Senior Counsel,

– the Polish Government, by S. Żyrek, J. Sawicka and B. Majczyna, acting as Agents,

– the European Commission, by S. Grünheid, K. Herrmann, P. Van Nuffel and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2021,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (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') as well as Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The requests have been made in proceedings in the Netherlands concerning the execution of two European arrest warrants issued respectively, in Case C-562/21 PPU, on 6 April 2021 by the Sąd Okręgowy w Lublinie (District Court, Lublin, Poland) for the purposes of executing a custodial sentence imposed on X and, in Case C-563/21 PPU, on 7 April 2021 by the Sąd Okręgowy w Zielonej Górze (District Court, Zielona Góra, Poland) for the purposes of conducting a criminal prosecution of Y.

Legal context

European Union law

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

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

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

…

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

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

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

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

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

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

6 Article 8 of the framework decision specifies the content and form of the European arrest warrant.

7 Under Article 15 of Framework Decision 2002/584, entitled 'Surrender decision':

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

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

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

Netherlands law

8 Framework Decision 2002/584 was transposed into Netherlands law by the Wet tot implementatie van het kaderbesluit van de Raad van de Europese Unie betreffende het Europees aanhoudingsbevel en de procedures van overlevering tussen de lidstaten van de Europese Unie (Overleveringswet) (Law implementing the Framework Decision of the Council of the European

Union on the European arrest warrant and the surrender procedures between the Member States of the European Union (Law on Surrender)) of 29 April 2004 (Stb. 2004, No 195), as amended by the Law of 17 March 2021 (Stb. 2021, No 155).

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

Case C-562/21 PPU

9 The referring court, the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands) received a request to execute a European arrest warrant issued on 6 April 2021 by the Sąd Okręgowy w Lublinie (District Court, Lublin). That European arrest warrant is for the arrest and surrender of a Polish national, for the purposes of executing a two-year custodial sentence imposed on the person concerned by a final judgment of 30 June 2020 for extortion and threats of violence.

10 The person concerned has not consented to his surrender to the Republic of Poland. He is currently in custody in the Netherlands, pending the referring court's ruling on that surrender.

11 The referring court states that it identified no grounds that could prevent that surrender, except for that raised in the question referred to the Court for a preliminary ruling.

12 The referring court finds that since 2017 there have been systemic or generalised deficiencies relating to the independence of the judiciary in the issuing Member State. Those deficiencies, which already existed at the time the European arrest warrant referred to in paragraph 9 above was issued, have been further exacerbated. According to the referring court, there is consequently a real risk that, in the event of surrender to the issuing Member State, the person concerned would suffer a breach of his fundamental right to a fair trial guaranteed in the second paragraph of Article 47 of the Charter.

13 According to that court, those deficiencies affect, in particular, the fundamental right to a tribunal previously established by law, guaranteed by that provision.

14 That court finds that the deficiencies at issue result, inter alia, from the ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw (Law amending the Law on the National Council of the Judiciary and certain other laws) of 8 December 2017 (Dz. U. of 2018, item 3) ('the Law of 8 December 2017'), which entered into force on 17 January 2018 and, in particular, from the role of the Krajowa Rada Sądownictwa (the Polish National Council of the Judiciary; 'the KRS') in the appointment of members of the Polish judiciary.

15 In that regard, the referring court refers to the resolution adopted by the Sąd Najwyższy (Supreme Court, Poland) on 23 January 2020, in which the latter court found that the KRS, because it is subordinated directly to political authorities since the entry into force of the Law of 8 December 2017, is not an independent body. That lack of independence results in deficiencies in the judicial appointment procedure. With regard to the courts other than the Sąd Najwyższy (Supreme Court), the referring court states that it is apparent from that resolution that the panel of judges is unduly appointed, for the purposes of the Kodeks postępowania karnego (Polish Code of Criminal Procedure), where it includes a person appointed to the office of judge on application of the KRS, in accordance with the legislation that entered into force on 17 January 2018, in so far as the deficiency at issue leads, in the circumstances of the case, to a breach of the guarantees of

independence and impartiality within the meaning of the Polish Constitution, Article 47 of the Charter and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (ECHR).

16 The referring court refers also to the judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596, paragraphs 108 and 110).

17 That court states, moreover, that it is aware of a list, established on 25 January 2020, containing the names of 384 judges appointed on application of the KRS since the entry into force of the Law of 8 December 2017. According to the referring court, it is likely that the number of such appointments has increased since.

18 In those circumstances, it finds that there is a real risk that one or more judges appointed on application of the KRS since the entry into force of the Law of 8 December 2017 have been involved in the criminal proceedings in respect of the person concerned.

19 In that respect, it explains that the person concerned is no longer able, since 14 February 2020, effectively to challenge the validity of the appointment of a judge or the lawfulness of the performance of that judge's judicial functions. Under the ustawa o zmianie ustawy – Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Law amending the Law on the organisation of the ordinary courts, the Law on the Supreme Court and certain other laws) of 20 December 2019 (Dz. U. of 2020, item 190), which entered into force on 14 February 2020, Polish courts may not consider such matters.

20 In addition, the referring court points out that the European Court of Human Rights considers in its case-law that the right to a tribunal 'established by law', as is guaranteed by Article 6(1) ECHR, while being a 'stand-alone' right, has nevertheless a very close relationship with the guarantees of independence and impartiality laid down in that provision. The referring court refers in that respect to the criteria established by that case-law for the purpose of assessing whether irregularities in a judicial appointment procedure entail a breach of the right to a tribunal established by law, within the meaning of Article 6(1) ECHR (ECtHR, 1 December 2020, *Ástráðsson v. Iceland*, CE:ECHR:2020:1201JUD002637418, §§ 243 to 252, and ECtHR, 22 July 2021, *Reczkowicz v. Poland*, CE:ECHR:2021:0722JUD004344719, §§ 221 to 224).

21 It is unclear to the referring court whether those criteria should also be applied in the context of the execution of a European arrest warrant issued for the purposes of executing a custodial sentence or detention order.

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

'What test should an executing judicial authority apply when deciding whether to execute [a European arrest warrant] for the purpose of executing a final custodial sentence or detention order when examining whether, in the issuing Member State, the trial resulting in the conviction was conducted in breach of the right to a tribunal previously established by law, where no effective remedy was available in that Member State for any breach of that right?'

Case C-563/21 PPU

23 The referring court also received a request to execute a European arrest warrant issued on 7 April 2021 by the Sąd Okręgowy w Zielonej Górze (District Court, Zielona Góra). That European arrest warrant seeks the arrest and surrender of a Polish national for the purposes of conducting a criminal prosecution.

24 The person concerned, who has not consented to his surrender to the Republic of Poland, is remanded in custody in the Netherlands, pending the referring court's ruling on that surrender.

25 The referring court notes that it identified no grounds that could prevent that surrender, except for that raised in the questions referred for a preliminary ruling in that case.

26 That court relies on the same grounds as those referred to in paragraphs 12 to 17 above, to which it refers in the request for a preliminary ruling which is the subject of Case C-562/21 PPU and on the basis of which it considers that systemic or generalised deficiencies relating to the independence of the judiciary in the issuing Member State affect, inter alia, the fundamental right of the person concerned to a tribunal previously established by law, guaranteed by the second paragraph of Article 47 of the Charter.

27 As regards the situation of the person whose surrender is sought in Case C-563/21 PPU, the referring court considers that there is a real risk that one or more judges appointed on application of the KRS since the entry into force of the Law of 8 December 2017, referred to in paragraph 14 above, would be called upon to hear the criminal case of the person concerned, if his surrender to the Republic of Poland for the purposes of conducting a criminal prosecution was authorised.

28 The referring court notes that it is factually impossible for a person whose surrender is sought for the purposes of conducting a criminal prosecution to bring an individual claim alleging irregularities that occurred in the appointment of one or more judges who will be called upon to hear his or her criminal case. Unlike a person whose surrender is sought for the purposes of executing a custodial sentence or detention order, a situation covered in Case C-562/21 PPU, a person whose surrender is sought for the purposes of conducting a criminal prosecution cannot indicate before the executing judicial authority, by reason of the manner in which cases are randomly allocated among the Polish courts, the composition of the panel of judges who will be called upon to hear that person's criminal case after his or her surrender. Furthermore, because of the entry into force, on 14 February 2020, of the law of 20 December 2019 referred to in paragraph 19 above, that person cannot challenge effectively, after his or her surrender to the Republic of Poland, the validity of the appointment of a judge or the lawfulness of the performance of that judge's judicial functions.

29 Furthermore, as regards the case-law of the European Court of Human Rights, referred to in paragraph 20 above, the referring court asks whether the criteria applied by that court in order to assess whether irregularities in a judicial appointment procedure entail a breach of the right to a tribunal established by law, within the meaning of Article 6(1) ECHR, must also be applied in the context of the execution of a European arrest warrant for the purposes of conducting a criminal prosecution.

30 Lastly, the referring court has doubts as to whether the criteria laid down in the judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586), and confirmed by the 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), apply to the assessment of whether, in the event of surrender, the person concerned runs a real risk of breach of his or her fundamental right to a tribunal previously established by law and, if so, how these criteria should be applied.

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

'(1) Is it appropriate to apply the test set out in the judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586), and affirmed in the 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), where there is a real risk that the person concerned will stand trial before a court not previously established by law?

(2) Is it appropriate to apply the test set out in the judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586), and affirmed in the 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), where the requested person seeking to challenge his [or her] surrender cannot meet that test by reason of the fact that it is not possible at that point in time to establish the composition of the courts before which he [or she] will be tried by reason of the manner in which cases are randomly allocated?

(3) Does the absence of an effective remedy to challenge the validity of the appointment of judges in Poland, in circumstances where it is apparent that the requested person cannot at this point in time establish that the courts before which he [or she] will be tried will be composed of judges not validly appointed, amount to a breach of the essence of the right to a fair trial, thus requiring the executing judicial authority to refuse the surrender of the requested person?'

Procedure before the Court

32 The referring court requested that the present references for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Rules of Procedure of the Court of Justice.

33 In support of its request, the referring court notes that the questions referred concern an area covered in Title V of Part Three of the FEU Treaty, that X and Y are currently deprived of liberty and that the Court's answer to those questions will have a direct and decisive influence on the duration of the detention of the persons concerned.

34 According to the Court's case-law, it is necessary to take into consideration the fact that the person concerned in the main proceedings is currently deprived of liberty and that the question as to whether that person may continue to be held in custody depends on the outcome of the

dispute in the main proceedings (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 32 and the case-law cited).

35 In the present case, as is apparent from the orders for reference, the persons concerned are currently remanded in custody and the Court's answer to the questions referred will have a direct and decisive influence on the duration of that detention.

36 In those circumstances, the First Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided, on 29 September 2021, to grant the referring court's requests that the present references for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

37 The First Chamber of the Court also decided to remit Cases C-562/21 PPU and C-563/21 PPU to the Court for them to be assigned to the Grand Chamber.

38 By decision of the President of the Court of Justice of 29 September 2021, Cases C-562/21 PPU and C-563/21 PPU were joined for the purposes of the written and oral parts of the procedure and the judgment.

Consideration of the questions referred

39 By its single question in Case C-562/21 PPU and its three questions in Case C-563/21 PPU, which it is appropriate to examine together, the referring court asks, in essence, whether Article 1(2) and (3) of Framework Decision 2002/584 must be interpreted as meaning 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 of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State, in particular as regards the procedure for the appointment of the members of the judiciary, that authority may refuse to surrender that person, by reason of the fact that, in the event of such surrender, there is a real risk of breach of that person's fundamental right to a fair trial before a tribunal previously established by law, enshrined in the second paragraph of Article 47 of the Charter, where:

– in the context of a European arrest warrant issued for the purposes of executing a custodial sentence or detention order, no effective judicial remedy is available for any breach of that fundamental right during the procedure which led to that person's conviction and

– in the context of a European arrest warrant issued for the purposes of conducting a criminal prosecution, the person concerned cannot determine, at the time of that surrender, the composition of the panel of judges before which that person will be tried, by reason of the manner in which cases are randomly allocated among the courts concerned, and there is no effective remedy in the issuing Member State to challenge the validity of the judicial appointment.

Preliminary observations

40 It is important to recall, first of all, 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 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 37 and the case-law cited).

41 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 (Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014, EU:C:2014:2454, paragraph 192).

42 In that respect, 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 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 38 and the case-law cited).

43 The principle of mutual recognition, which, according to recital 6 of Framework Decision 2002/584, constitutes the 'cornerstone' of judicial cooperation in criminal matters, is expressed in Article 1(2) thereof which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the framework decision (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 40 and the case-law cited).

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

45 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 (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 58). 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 (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 39 and the case-law cited).

46 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 (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 40), 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 the executing judicial authority to refrain, exceptionally, from giving effect to that European arrest warrant on the basis of Article 1(3) of that framework decision (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 59).

47 Next, the Court has also stated that Framework Decision 2002/584, 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, of which the European arrest warrant, as provided for by the EU legislature, constitutes one of the essential elements (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 43 and the case-law cited).

48 The Court has thus held 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 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 44 and the case-law cited).

49 Lastly, and following on from the foregoing considerations, 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 mutual trust on the basis of that cooperation (judgment of 6 December 2018, *IK (Enforcement of an additional sentence)*, C-551/18 PPU, EU:C:2018:991, paragraph 63 and the case-law cited).

The conditions on which the executing judicial authority may refuse, on the basis of Article 1(3) of Framework Decision 2002/584, the surrender of a person in respect of whom a

European arrest warrant has been issued on the ground that there is a real risk that that person, if surrendered to the issuing judicial authority, would suffer a breach of his or her fundamental right to a fair trial before a tribunal previously established by law

50 In the light, in particular, of the considerations set out in paragraphs 40 to 46 above, the Court held, with regard to Article 1(3) of Framework Decision 2002/584, 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 of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State, it cannot, however, presume that there are substantial grounds for believing that that person runs a real risk of breach of his or her fundamental right to a fair trial if surrendered to that Member State, without carrying out a specific and precise verification which takes account of, inter alia, that person's personal situation, the nature of the offence in question and the factual context in which that warrant was issued, such as statements or acts by public authorities which are liable to interfere with how an individual case is handled (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 69).

51 Therefore, information regarding the existence of or increase in systemic or generalised deficiencies so far as concerns the independence of the judiciary in a Member State is not sufficient, in itself, to justify a refusal to execute such a warrant issued by a judicial authority of that Member State (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 63).

52 In the context of the two-step examination referred to in paragraph 50 above and set out for the first time, in respect of the second paragraph of Article 47 of the Charter, in the judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586, paragraphs 47 to 75), the executing judicial authority must, as a first step, determine whether there is objective, reliable, specific and duly updated material indicating that there is a real risk of breach, in the issuing Member State, of the fundamental right to a fair trial guaranteed by that provision, on account of systemic or generalised deficiencies so far as concerns the independence of that Member State's judiciary (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 54 and the case-law cited).

53 As a second step, the executing judicial authority must determine, specifically and precisely, to what extent the deficiencies identified in the first step are liable to have an impact at the level of the courts of that Member State which have jurisdiction over the proceedings in respect of the person concerned 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, and having regard to any information provided by that Member State pursuant to Article 15(2) of Framework Decision 2002/584, there are substantial grounds for believing that that person will run such a risk if he or she is surrendered to the latter (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 55 and the case-law cited).

54 In the present case, the referring court asks, in essence, whether that two-step examination, which was established by the Court, in the judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586), and 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), under the guarantees of independence and impartiality inherent in the fundamental right to a fair trial enshrined in the second paragraph of Article 47 of the Charter, is applicable where the guarantee, also inherent in that fundamental right, of a tribunal previously established by law is at issue and, if so, what are the conditions and detailed rules for applying the said examination. In particular, it raises the question of the influence, on that examination in that respect, of the fact that a body such as the KRS, which is, for the most part, made up of members representing or chosen by the legislature or the executive, is involved in the appointment or career development of the members of the judiciary in the issuing Member State.

55 As regards the applicability of the two-step examination referred to in paragraphs 52 and 53 above, in the case referred to in the previous paragraph, it is necessary, in the first place, to stress the inextricable links which, according to the wording of the second paragraph of Article 47 of the Charter, exist, for the purposes of the fundamental right to a fair trial, within the meaning of that provision, between the guarantees of judicial independence and impartiality as well as that of access to a tribunal previously established by law.

56 It thus follows from the Court's case-law, developed in the light of that of the European Court of Human Rights, that, while the right to such a tribunal, which is guaranteed both by Article 6(1) ECHR and by the second paragraph of Article 47 of the Charter, constitutes an independent right, it is nevertheless inextricably linked to the guarantees of independence and impartiality flowing from those two provisions. More specifically, although all the requirements laid down by those provisions have specific aims which render them specific guarantees of a fair trial, those safeguards seek to observe the fundamental principles of the rule of law and the separation of powers. The need to maintain public confidence in the judiciary and to safeguard its independence vis-à-vis the other powers underlies each of those requirements (see, to that effect, judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 124 and the case-law cited).

57 As regards, more specifically, the judicial appointment procedure, the Court has held, again referring to the case-law of the European Court of Human Rights, that having regard to its fundamental implications for the proper functioning and the legitimacy of the judiciary in a democratic State governed by the rule of law, the procedure for the appointment of judges necessarily constitutes an inherent element of the concept of a 'tribunal established by law', within the meaning of Article 6(1) ECHR, while noting that the independence of a tribunal within the meaning of that provision, may be measured, inter alia, by the way in which its members are appointed (see, to that effect, judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 125 and the case-law cited).

58 The Court has also pointed out that the guarantees of access to an independent and impartial tribunal previously established by law, and in particular those which determine what constitutes a tribunal and how it is composed, represent the cornerstone of the right to a fair trial. Checking whether, as composed, a court constitutes such a tribunal where a serious doubt arises on that point is necessary for the confidence which the courts in a democratic society must inspire in

those subject to their jurisdiction (judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 126 and the case-law cited).

59 In the second place, it is important to note that to accept that an executing judicial authority may refrain from giving effect to a European arrest warrant merely because of a circumstance such as that mentioned in the second sentence of paragraph 54 above would lead to an interpretation of Article 1(3) of Framework Decision 2002/584 that fails to have regard to the case-law of the Court referred to in paragraphs 44 and 46 above.

60 Moreover, in the context of the interpretation of that provision, it is necessary to ensure not only respect for the fundamental rights of the persons whose surrender is requested, but also the taking into account of other interests, such as the need to respect, where appropriate, the fundamental rights of the victims of the offences concerned.

61 In that regard, the existence of rights of third parties in criminal proceedings implies, in the context of the European arrest warrant mechanism, a duty of cooperation on the part of the executing Member State. In addition, having regard to those rights, a finding that there is a real risk, if the person concerned is surrendered to the issuing Member State, of breach of that person's fundamental right to a fair trial must have a sufficient factual basis (see also, to that effect, ECtHR, 9 July 2019, *Castaño v. Belgium*, CE:ECHR:2019:0709JUD000835117, §§ 82, 83 and 85).

62 In the same vein, one of the objectives of Framework Decision 2002/584 is to combat impunity. If the existence of systemic or generalised deficiencies so far as concerns the independence of the judiciary in the issuing Member State were, in itself, sufficient to enable the executing judicial authority not to carry out the two-step examination referred to in paragraphs 52 and 53 above and to refuse to execute, on the basis of Article 1(3) of that framework decision, a European arrest warrant issued by the issuing Member State, that would entail a high risk of impunity for persons who attempt to flee from justice after having been convicted of, or after they have been suspected of committing, an offence, even if there is no evidence to suggest a real risk, if they were surrendered, of breach of their fundamental right to a fair trial (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 64).

63 In the third place, the approach referred to in the preceding paragraph above would lead to a de facto suspension of the implementation of the European arrest warrant mechanism in respect of that Member State, in disregard of the competence of the European Council and the Council in that respect.

64 As recalled by the Court, that implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 2 TEU, including that of the rule of law, determined by the European Council pursuant to Article 7(2) TEU, with the consequences provided for in Article 7(3) TEU (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 57).

65 Therefore, it is only if the European Council were to adopt a decision and to suspend Framework Decision 2002/584 in respect of the Member State concerned that the executing judicial authority would be required to refuse automatically to execute any European arrest warrant issued by that

Member State, without having to carry out any specific assessment of whether the individual concerned runs a real risk that the essence of his or her fundamental right to a fair trial will be affected (judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20, EU:C:2020:1033, paragraph 58 and the case-law cited).

66 It follows from the considerations set out in paragraphs 55 to 65 above that the executing judicial authority is required to carry out the two-step examination referred to in paragraphs 52 and 53 above, in order to assess whether, if the person concerned is surrendered to the issuing Member State, that person runs a real risk of breach 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.

The first step of the examination

67 As a first step in that examination, the executing judicial authority must make a general assessment of whether there is a real risk of breach of the fundamental right to a fair trial, connected in particular with a lack of independence of the courts of the issuing Member State or a failure to comply with the requirement for a tribunal established by law, on account of systemic or generalised deficiencies in that Member State (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 61 and the case-law cited).

68 Such an assessment must be carried out having regard to the standard of protection of the fundamental right that is guaranteed by the second paragraph of Article 47 of the Charter (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 62 and the case-law cited).

69 In that respect, as regards, first, the requirements of independence and impartiality, which, as has been pointed out in paragraphs 55 to 58 above, are inextricably linked to that relating to a tribunal previously established by law, those requirements presuppose rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, that are such as to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it (see, to that effect, judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931, paragraph 67 and the case-law cited).

70 As regards appointment decisions, it is in particular necessary for the substantive conditions and detailed procedural rules governing the adoption of those decisions to be such that they cannot give rise to such reasonable doubts with respect to the judges appointed (judgment of 26 March 2020, Review of *Simpson* v *Council* and *HG* v *Commission*, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, paragraph 71 and the case-law cited).

71 Secondly, as regards the requirement for a tribunal previously established by law, the Court has held, referring to the case-law of the European Court of Human Rights concerning Article 6 ECHR (ECtHR, 8 July 2014, *Biagioli v. San Marino*, CE:ECHR:2014:0708DEC000816213, §§ 72 to 74, and ECtHR, 2 May 2019, *Pasquini v. San Marino*, CE:ECHR:2019:0502JUD005095616, §§ 100 and 101 and the case-law cited), that the phrase 'established by law' reflects, inter alia, the principle of the rule of law. It covers not only the legal basis for the very existence of a tribunal, but also the composition of the panel of judges in each case and any other provision of domestic law which, if

breached, would render irregular the participation of one or more judges in the examination of the case, including, in particular, provisions concerning the independence and impartiality of the members of the body concerned. Furthermore, the right to be judged by a tribunal 'established by law' encompasses, by its very nature, the judicial appointment procedure (see, to that effect, judgment of 26 March 2020, Review of *Simpson* v *Council* and *HG* v *Commission*, C-542/18 RX-II and C-543/18 RX-II, EU:C:2020:232, paragraph 73).

72 As regards the criteria for assessing whether there has been a breach of the fundamental right to a tribunal previously established by law, within the meaning of the second paragraph of Article 47 of the Charter, it is important to note that not every irregularity in the judicial appointment procedure can be regarded as constituting such a breach.

73 An irregularity committed during the appointment of judges within the judicial system concerned entails such a breach, particularly when that irregularity is of such a kind and of such gravity as to create a real risk that other branches of the State, in particular the executive, could undermine the integrity of the outcome of the appointment procedure and thus give rise to reasonable doubt in the minds of individuals as to the independence and impartiality of the judge or judges concerned (see, to that effect, judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraph 130 and the case-law cited).

74 A finding that there has been a breach of the requirement for a tribunal previously established by law and the consequences of such a breach is subject to an overall assessment of a number of factors which, taken together, serve to create in the minds of individuals reasonable doubt as to the independence and impartiality of the judges (see, to that effect, judgments of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraphs 131 and 132, and of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraphs 152 to 154).

75 Thus, the fact that a body, such as a national council of the judiciary, which is involved in the procedure for the appointment of judges is, for the most part, made up of members chosen by the legislature cannot, in itself, give rise to any doubt as to the independence of the judges appointed at the end of that procedure (see, to that effect, judgment of 9 July 2020, *Land Hessen*, C-272/19, EU:C:2020:535, paragraphs 55 and 56). However, the situation may be different where that fact, combined with other relevant factors and the conditions under which those choices were made, leads to such doubts being raised (see, to that effect, judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596, paragraph 103)).

76 The fact that a body made up, for the most part, made up of members representing or chosen by the legislature or the executive, intervenes in the judicial appointment procedure in the issuing Member State is therefore not sufficient, in itself, to justify a decision of the executing judicial authority refusing to surrender the person concerned.

77 It follows that, in the context of a surrender procedure linked to the execution of a European arrest warrant, the assessment of whether there is a real risk of breach of the fundamental right to a fair trial, connected in particular with a lack of independence of the courts of the issuing Member State or a failure to comply with the requirement for a tribunal previously established by law, on account of systemic or generalised deficiencies in that Member State, presupposes an

overall assessment, on the basis of any evidence that is objective, reliable, specific and properly updated concerning the operation of that Member State's judicial system, in particular the general context of appointment of judges in that Member State.

78 In the present case, in addition to the information contained in a reasoned proposal addressed by the European Commission to the Council on the basis of Article 7(1) TEU (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 61), the factors that are particularly relevant for the purposes of that assessment include, inter alia, those mentioned by the referring court, namely the resolution of the Sąd Najwyższy (Supreme Court) of 23 January 2020 and the Court's case-law, such as that resulting from the judgments of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982), of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153), of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596), and of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* (C-487/19, EU:C:2021:798), which contain indications as to the state of operation of the issuing Member State's judicial system.

79 In the context of that assessment, the executing judicial authority may also take account of the case-law of the European Court of Human Rights, in which a breach of the requirement for a tribunal established by law in respect of the procedure for the appointment of judges has been established (see, inter alia, ECtHR, 22 July 2021, *Reczkowicz v. Poland*, CE:ECHR:2021:0722JUD004344719).

80 For the sake of completeness, it should also be added that those relevant factors also include constitutional case-law of the issuing Member State, which challenges the primacy of EU law and the binding nature of the ECHR as well as the binding force of judgments of the Court of Justice and of the European Court of Human Rights relating to compliance with EU law and with that convention of rules of that Member State governing the organisation of its judicial system, in particular the appointment of judges.

81 Where the executing judicial authority considers, on the basis of factors such as those referred to in paragraphs 78 to 80 above, that there is a real risk of breach of the fundamental right to a fair trial, connected in particular with a lack of judicial independence in the issuing Member State or a failure to comply with the requirement for a tribunal previously established by law, on account of systemic or generalised deficiencies in the issuing Member State, it cannot refuse to execute a European arrest warrant without proceeding to the second step of the examination referred to in paragraphs 52 and 53 above.

The second step of the examination

82 As a second step, the executing judicial authority must assess whether the systemic or generalised deficiencies found in the first step of that examination are likely to materialise if the person concerned is surrendered to the issuing Member State and whether, in the particular circumstances of the case, that person thus runs a real risk of breach 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.

83 It is for the person in respect of whom a European arrest warrant has been issued to adduce specific evidence to suggest, in the case of a surrender procedure for the purposes of executing a custodial sentence or detention order, that systemic or generalised deficiencies in the judicial system of the issuing Member State had a tangible influence on the handling of his or her criminal case and, in the case of a surrender procedure for the purposes of conducting a criminal prosecution, that such deficiencies are liable to have such an influence. The production of such specific evidence relating to the influence, in his or her particular case, of the abovementioned systemic or generalised deficiencies is without prejudice to the possibility for that person to rely on any ad hoc factor specific to the case in question capable of establishing that the proceedings for the purposes of which his or her surrender is requested by the issuing judicial authority will tangibly undermine his or her fundamental right to a fair trial.

84 In the event that the executing judicial authority considers that the evidence put forward by the person concerned, although suggesting that those systemic and generalised deficiencies have had, or are liable to have, a tangible influence in that person's particular case, is not sufficient to demonstrate the existence, in such a case, of a real risk of breach of the fundamental right to a tribunal previously established by law, and thus to refuse to execute the European arrest warrant in question, that authority must, pursuant to Article 15(2) of Framework Decision 2002/584, request the issuing judicial authority to furnish as a matter of urgency all the supplementary information that it deems necessary.

85 Since the issuing judicial authority is obliged to provide that information to the executing judicial authority (judgment of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C-220/18 PPU, EU:C:2018:589, paragraph 64 and the case-law cited), any conduct showing a lack of sincere cooperation on the part of the issuing judicial authority may be regarded by the executing judicial authority as a relevant factor for the purposes of assessing whether the person whose surrender is requested, if surrendered, runs a real risk of breach of his or her right to a fair trial before a tribunal previously established by law, enshrined in the second paragraph of Article 47 of the Charter.

86 That said, and as regards, first, the case, covered in Case C-562/21 PPU, of a European arrest warrant issued with a view to surrender for the purposes of executing a custodial sentence or detention order, it is for the person whose surrender is sought to rely on specific factors on the basis of which he or she considers that the systemic or generalised deficiencies of the judicial system in the issuing Member State had a tangible influence on the criminal proceedings in his or her respect, in particular on the composition of the panel of judges who were called upon to hear the criminal case in question, with the result that one or more judges in that panel did not offer the guarantees of independence and impartiality required under EU law.

87 As is apparent from paragraphs 74 to 76 above, and contrary to the assertions of the Netherlands Government, information concerning the fact that one or more of the judges who participated in the proceedings that led to the conviction of the person whose surrender is sought were appointed on application of a body made up, for the most part, of members representing or chosen by the legislature or the executive, as is the case with the KRS since the entry into force of the Law of 8 December 2017, is not sufficient in that regard.

88 Therefore, the person concerned would also have to provide, as regards the panel of judges who heard his or her criminal case, information relating to, inter alia, the procedure for the appointment of the judge or judges concerned and their possible secondment, on the basis of which the executing judicial authority would be able to establish, in the circumstances of the

case, that there are substantial grounds for considering that the composition of that panel of judges was such as to affect that person's fundamental right to a fair trial before an independent and impartial tribunal previously established by law, enshrined in the second paragraph of Article 47 of the Charter, in the criminal proceedings in respect of that person.

89 Thus, for example, information which the executing judicial authority possesses and which refers to the secondment of a particular judge within the panel of judges hearing the criminal case concerning the person whose surrender is sought, secondment decided by the Minister for Justice on the basis of criteria not known in advance and revocable at any time by a decision which is not reasoned by that minister, may give rise to substantial grounds for concluding that there is a real risk of breach, in the specific case of the relevant person, of that fundamental right (see, by analogy, judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931, paragraphs 77 to 90).

90 In addition, any information relating to the course of the criminal proceedings that led to the conviction of the person concerned, such as, where appropriate, the possible exercise by that person of the legal remedies available to that person, is relevant. In particular, account must be taken of the possibility that that person may request, in the issuing Member State, the rejection of one or more members of the panel of judges for breach of that person's fundamental right to a fair trial, the possible exercise by that person of his or her right to request such rejection and the information obtained concerning the outcome of such a request in those proceedings or in any appeal proceedings.

91 In the present case, the Polish Government stated in its written observations, without being challenged on that point at the hearing, that Polish procedural law provides for the possibility that the person concerned may request the rejection of one of the judges, or of the panel of judges as a whole, called upon to hear the criminal case in respect of that person, if that person has doubts as to the independence or impartiality of one or more judges of the panel concerned.

92 However, there is nothing in the file before the Court in the present preliminary ruling procedure to support the conclusion, in the absence of more detailed information as to the state of national law and the various relevant provisions thereof, that the existence of the possibility that the person concerned may assert his or her rights was called into question by the mere circumstance, noted by the referring court and set out in paragraph 19 above, that, since the entry into force of the Law of 20 December 2019 on 14 February 2020, it is no longer possible effectively to challenge the validity of the appointment of a judge or the lawfulness of the performance of the judge's judicial functions.

93 As regards, secondly, the case, covered in Case C-563/21 PPU, of a European arrest warrant issued for the purposes of conducting a criminal prosecution, it must be pointed out that the fact, mentioned by the referring court, that the person whose surrender is sought cannot know, before his or her possible surrender, the identity of the judges who will be called upon to hear the criminal case to which that person may be subject after that surrender cannot in itself be sufficient for the purposes of refusing that surrender.

94 Nothing in the system created in Framework Decision 2002/584 permits the inference that the surrender of a person to the issuing Member State for the purposes of conducting a criminal prosecution is conditional on the assurance that such prosecution will result in criminal proceedings before a specific court, and even less so on the precise identification of the judges who will be called upon to hear that criminal case.

95 An interpretation to the contrary would render the second step of the examination referred to in paragraphs 52 and 53 above redundant and would undermine not only the attainment of the objective of Framework Decision 2002/584, recalled in paragraph 42 above, but also the mutual trust between the Member States which underpins the European arrest warrant mechanism established in that framework decision.

96 That said, in circumstances such as those at issue in Case C-563/21 PPU, where the composition of the panel of judges called upon to hear the case concerning the person in respect of whom the European arrest warrant has been issued is not known at the time when the executing judicial authority has to decide on the surrender of that person to the issuing Member State, that authority cannot, nevertheless, dispense with an overall assessment of the circumstances of the case, in order to determine, on the basis of the information provided by that person and supplemented, where appropriate, by the information provided by the issuing judicial authority, whether, in the event of surrender, there is a real risk of breach of that person's fundamental right to a fair trial before a tribunal previously established by law.

97 As the Advocate General observed, in essence, in point 63 of his Opinion, such information may, in particular, relate to statements made by public authorities which could have an influence on the specific case in question. The executing judicial authority may also rely on any other information which it considers relevant, such as that relating to the personal situation of the person concerned, the nature of the offence for which that person is prosecuted and the factual context in which the European arrest warrant concerned is issued, but also, where appropriate, on any other information available to it concerning the judges who make up the panels likely to have jurisdiction to hear the proceedings in respect of that person after his or her surrender to the issuing Member State.

98 In that regard, it must nevertheless be stated, following on from the considerations set out in paragraph 87 above, that information relating to the appointment, on application of a body made up, for the most part, of members representing or chosen by the legislature or the executive, as is the case with the KRS since the entry into force of the Law of 8 December 2017, of one or more judges sitting in the competent court or, where it is known, in the relevant panel of judges, is not sufficient to establish that the person concerned, if surrendered, runs a real risk of breach of his or her fundamental right to a fair trial before a tribunal previously established by law. Such a finding presupposes, in any event, a case-by-case assessment of the procedure for the appointment of the judge or judges concerned.

99 Similarly, if the executing judicial authority cannot exclude that the person in respect of whom a European arrest warrant has been issued for the purposes of conducting a criminal prosecution may, if surrendered, run a real risk of breach of that fundamental right solely on the ground that that person has, in the issuing Member State, the possibility of requesting the rejection of one or more members of the panel of judges who will be called upon to hear his or her criminal case, the existence of such a possibility may nevertheless be taken into account by that authority as a relevant factor for the purposes of assessing the existence of such a risk (see, by analogy, judgment of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C-220/18 PPU, EU:C:2018:589, paragraph 117).

100 In that regard, the fact that such rejection may, where appropriate, be requested, in the context of a European arrest warrant issued for the purposes of conducting a criminal prosecution, only after the surrender of the person concerned and once that person has become aware of the composition

of the panel of judges called upon to rule on the prosecution in respect of that person is irrelevant in the context of the assessment of whether there is a real risk that that person would suffer, if surrendered, a breach of that fundamental right.

101 If, following an overall assessment, the executing judicial authority finds that there are substantial grounds for believing that the person concerned, if surrendered, runs a real risk of breach of his or her fundamental right to a fair trial before an independent and impartial tribunal previously established by law, that authority must refrain, under Article 1(3) of Framework Decision 2002/584, from executing the European arrest warrant concerned. Otherwise, it must execute that warrant, in accordance with the obligation of principle laid down in Article 1(2) of that framework decision (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 61).

102 In the light of all of the foregoing, the answer to the questions referred is that Article 1(2) and (3) of Framework Decision 2002/584 must be interpreted as meaning 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 of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State, in particular as regards the procedure for the appointment of the members of the judiciary, that authority may refuse to surrender that person:

– in the context of a European arrest warrant issued for the purposes of executing a custodial sentence or detention order, only if that authority finds that, in the particular circumstances of the case, there are substantial grounds for believing that, having regard inter alia to the information provided by that person relating to the composition of the panel of judges who heard his or her criminal case or to any other circumstance relevant to the assessment of the independence and impartiality of that panel, there has been a breach of that person's fundamental right to a fair trial before an independent and impartial tribunal previously established by law, enshrined in the second paragraph of Article 47 of the Charter, and

– in the context of a European arrest warrant issued for the purposes of conducting a criminal prosecution, only if that authority finds that, in the particular circumstances of the case, there are substantial grounds for believing that, having regard inter alia to the information provided by the person concerned relating to his or her personal situation, the nature of the offence for which that person is prosecuted, the factual context surrounding that European arrest warrant or any other circumstance relevant to the assessment of the independence and impartiality of the panel of judges likely to be called upon to hear the proceedings in respect of that person, the latter, if surrendered, runs a real risk of breach of that fundamental right.

Costs

103 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:

Article 1(2) and (3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where the executing judicial authority called upon to decide on the surrender of a person in respect of whom a European arrest warrant has been issued has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State, in particular as regards the procedure for the appointment of the members of the judiciary, that authority may refuse to surrender that person:

– **in the context of a European arrest warrant issued for the purposes of executing a custodial sentence or detention order, only if that authority finds that, in the particular circumstances of the case, there are substantial grounds for believing that, having regard inter alia to the information provided by that person relating to the composition of the panel of judges who heard his or her criminal case or to any other circumstance relevant to the assessment of the independence and impartiality of that panel, there has been a breach of that person's fundamental right to a fair trial before an independent and impartial tribunal previously established by law, enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, and**

– **in the context of a European arrest warrant issued for the purposes of conducting a criminal prosecution, only if that authority finds that, in the particular circumstances of the case, there are substantial grounds for believing that, having regard inter alia to the information provided by the person concerned relating to his or her personal situation, the nature of the offence for which that person is prosecuted, the factual context surrounding that European arrest warrant or any other circumstance relevant to the assessment of the independence and impartiality of the panel of judges likely to be called upon to hear the proceedings in respect of that person, the latter, if surrendered, runs a real risk of breach of that fundamental right.**

[Signatures]