

Case C-203/20

Request for a preliminary ruling

Date lodged:

11 May 2020

Referring court:

Okresný súd Bratislava III (Slovakia)

Date of the order for reference:

11 May 2020

Defendants:

AB

CD

EF

GH

IJ

LM

NO

PR

ST

UV

WZ

BC

DE

FG

JL

OKRESNÝ SÚD BRATISLAVA III
(DISTRICT COURT, BRATISLAVA III)

[...]

Bratislava, 11 May 2020

[...]

Re: Request for a preliminary ruling (Article 267 TFEU)

Request for application of the urgent preliminary ruling procedure (Article 107 of the Rules of Procedure)

The President of the Okresný súd (District Court) Bratislava III, Slovakia [...], in the criminal case being tried before the Okresný súd Bratislava III [...], in accordance (by analogy) with Article 224(7) of the Code of Criminal Procedure in force until 31 December 2005 ('the Code of Criminal Procedure') and Article 267 TFEU, submits the present request for a preliminary ruling under Article 267 TFEU and a request for application of the urgent preliminary ruling procedure under Article 107 of the Rules of Procedure of the Court of Justice.

Identification of the parties:

Proceedings brought against:

1. **Defendant AB**, [...], Slovak Republic [...] **[Or. 2]** [...]
2. **Defendant CD**, [...], Slovak Republic [...]
3. **Defendant EF**, [...], Slovak Republic [...]
4. **Defendant GH**, [...], Slovak Republic [...]
5. **Defendant IJ**, [...], Slovak Republic [...]
6. **Defendant LM**, [...], Slovak Republic [...]
7. **Defendant NO**, [...], Slovak Republic [...] **[Or. 3]**
8. **Defendant PR**, [...], Slovak Republic [...]
9. **Defendant ST**, [...], Slovak Republic, residing at the time at an unknown address, proceedings *in absentia* [...]
10. **Defendant UV**, [...], Slovak Republic [...]

11. Defendant WZ, [...], Slovak Republic [...]
12. Defendant BC, [...], Slovak Republic [...]
13. Defendant DE, [...], Slovak Republic [...]
14. Defendant FG, [...], Slovak Republic [...] [Or. 4] [...]
15. Defendant JL, [...], Slovak Republic [...]
16. Victim HI, [...], Slovak Republic
- 17/ Public prosecution brought by:

Krajská prokuratúra (Regional Prosecutor's Office), Bratislava [...]

The Okresný súd (District Court) Bratislava III ('the referring court') [...], in the case involving AB and Others, for the offence of abduction to a foreign country, committed as a group within the meaning of Article 9(2), in conjunction with Article 233(1) and (2)(a), of the Criminal Code in force at the relevant time, decided as follows at a closed hearing on 21 June 2019:

- I. [...] [suspension of proceedings]
- II. The **following questions are referred for a preliminary ruling** to the Court of Justice of the European Union under Article 267 TFEU:

(1) Does the *ne bis in idem* principle preclude the issuance of a European arrest warrant within the meaning of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, and taking into account Article 50 of the Charter of Fundamental Rights of the European Union, where the criminal case has been finally closed by a judicial decision to acquit or to discontinue the case, if those decisions have been adopted on the basis of an amnesty that has been revoked by the legislature after the decisions became final and the domestic legal order provides that revocation of such an amnesty entails annulment of decisions of public authorities, where they have been adopted and [Or. 5] substantiated on the basis of amnesties or pardons, and the legal obstacles of criminal prosecutions that were based on an amnesty thus revoked have disappeared, without a specific judicial decision or judicial proceedings?

(2) Does a provision of a national law that annuls directly — without a decision of a national court — the decision of a national court discontinuing criminal proceedings, which is, under national law, a final decision entailing acquittal and on the basis of which the criminal proceedings have been finally discontinued following the amnesty granted in accordance with a national law, comply with the right to a fair trial, guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union, and the right not to be tried or punished twice in criminal

proceedings for the same criminal offence, guaranteed in Article 50 of the Charter of Fundamental Rights of the European Union and in Article 82 of the Treaty on the Functioning of the European Union?

(3) Does a provision of national law limiting review by the Constitutional Court of the Resolution of the Národná rada Slovenskej republiky (National Council of the Slovak Republic), which revoked an amnesty or individual pardons and was adopted under Article 86(i) of the Constitution of the Slovak Republic, merely to an assessment of the resolution's constitutionality, without taking into account binding acts adopted by the European Union, in particular the Charter of Fundamental Rights of the European Union, the Treaty on the Functioning of the European Union and the Treaty on European Union, comply with the principle of sincere cooperation within the meaning of Article 4(3) of the Treaty on European Union, Article 267 of the Treaty on the Functioning of the European Union and Article 82 of the Treaty on the Functioning of the European Union, the right to a fair trial, guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence, guaranteed in Article 50 of the Charter of Fundamental Rights of the European Union?

III. Under Article 107 of the Rules of Procedure [of the Court of Justice], the referring court asks the Court of Justice to deal with the request for a preliminary ruling under an urgent procedure, since the case concerns a European arrest warrant, which must be dealt with as a matter of urgency within the meaning of Article 17(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ('Framework Decision 2002/584') (judgments of 12 August 2008, *Santesteban Goicoechea*, C-296/08 PPU, EU:C:2008:457; of 1 December 2008, *Leymann and Pustovarov*, C-388/08 PPU, EU:C:2008:669; of 30 November 2009, *Kadzoev*, C-357/09 PPU, EU:C:2009:741; order of 3 April 2010, *Gataev and Gataeva*, C-105/10 PPU, EU:C:2010:176; judgment of 28 April 2011, *El Dridi*, C-61/11 PPU, EU:C:2011:268).

I. General grounds for the referring court's position

1. The chamber of the referring court has decided to make a request for a preliminary ruling on the basis of the following circumstances. On 27 November 2000, the Krajská prokuratúra (Regional Prosecutor's Office), Bratislava [...] brought a public prosecution before the referring court against (1) defendants AB, CD, GH, EF, IJ, PR, LM and NO, who were charged with the following offences: abuse of power by a public official within the meaning of Article 158(1)(a) of the Criminal Code in force until 31 December 2005 ('the Criminal Code'), committed as a group within the meaning of Article 9(2) of the Criminal Code; abduction to a foreign country within the meaning of Article 233(1) and (2)(a) of the Criminal Code, committed as a group within the meaning of Article 9(2) of the Criminal Code; robbery within the meaning of Article 234(1) and (2)(a) and (b) of the

Criminal Code, committed as a group within the meaning of Article 9(2) of the Criminal Code; extortion within the meaning of Article 235(1) and (2)(a) and (b) of the Criminal Code, committed as a group within the meaning of Article 9(2) of the Criminal Code; and also defendants ST [Or. 6] UV, WZ and BC, who were charged with the following offences: abduction to a foreign country within the meaning of Article 233(1) and (2)(a) of the Criminal Code, committed as a group within the meaning of Article 9(2) of the Criminal Code; robbery within the meaning of Article 234(1) and (2)(a) and (b) of the Criminal Code, committed as a group within the meaning of Article 9(2) of the Criminal Code; extortion within the meaning of Article 235(1) and (2)(a) and (b) of the Criminal Code, committed as a group within the meaning of Article 9(2) of the Criminal Code; and against (2) defendant DE for the offence of facilitating the commission of offences within the meaning of Article 166(1) of the Criminal Code, offences that the defendants allegedly committed in the following circumstances:

(1) defendants AB, CD, EF, GH, IJ, LM, NO and [...] PR, being officers of a State body, namely the Slovenská informačná služba (Slovak Intelligence Service; 'the SIS'), exceeding the scope of the powers of that service as set out in Article 1(2) of zákon číslo 46/1993 Z. z. o Slovenskej informačnej službe (Law No 46/1993 on the Slovak Intelligence Service; 'Law 46/1993'), and of the duties as set out in Article 2 of Law 46/1993 and in breach of the obligations incumbent on officers of the Intelligence Service within the meaning of Article 7 of Law 46/1993; and defendants ST, UV, WZ and BC, as civilians, failing to comply with the requirements laid down in Article 11(1)(c) of Law 46/1993, and as members of an organised group within which tasks were allocated in such a way as to harm HI by infringing his rights guaranteed under the Constitution in that, after following him, arresting him by force and drugging him, they surrendered him to the Austrian police force in his private motor vehicle by driving him to Austria, a country in which he was the subject of an international arrest warrant issued on 18 November 1994; their involvement in the commission of that offence was as follows: defendant [...] AB, being the Director of the SIS, within the framework of the vertical chain of command, issued an oral instruction to [...] PR, an SIS officer assigned to the Defence, Protection and Training Section, on an unspecified date during summer 1995, in an SIS building in Bratislava [...], to set up an organised group of civilians for the purpose of carrying out special missions for the SIS, and that group was set up and used for the arrest of HI on 31 August 1995.

At an unspecified date in August 1995, in breach of Article 10(1) of Law 46/1993, [AB] instructed CD, the Director of Service 46 of the SIS (Surveillance and Operational Techniques), by order of the Director of the SIS No 17/1994 on the surveillance of persons and objects ('Order 17/1994'), to use, in breach of Article 13(2) of Law 46/1993, technical means of intelligence-gathering within the meaning of Article 12(1)(c) for purposes of the surveillance of XY and HI, in that he ordered, in breach of Article 7(1) of the Order of the Director of the Surveillance and Operational Techniques Service of the SIS No 4/1994 of 15 July 1994 ('Order 4/1994'), the surveillance of XY, which began on 13 August 1995 at 10.30 in Bratislava [...] although the surveillance file, No 4600/337, code name

[...] was not submitted until 14 August 1995, and the surveillance of HI, which began on 23 August 1995 in [...] although the surveillance file was not submitted and the conditions laid down in Article 7(1) of Order 4/1994 were not complied with.

On 28 August 1995, [AB] instructed LP, Director of Domestic Intelligence of Section 2 of the SIS, to make ready, using SIS funds, five private motor vehicles of various makes in the car park in front of the Ružinov winter ice rink for 19 August 1995, and on 29 August 1995 he instructed him to designate two officers of the Special Operations Division of the SIS with a private motor vehicle, who were to pick up victim HI's motor vehicle, together with the victim HI, at the [...] station in Bratislava [...] and drive it to Austria, which he did and he informed AB accordingly. [Or. 7]

From 28 August 1995 to 31 August 1995, through defendant CD, he obtained information from the Head of Division 1 of Service 46 of the SIS, defendant EF, concerning the progress of the operational implementation and the surveillance of HI, took decisions and issued oral instructions to the Director of Section 2 of the SIS and to defendant CD in order to coordinate the activities of the various teams carrying out the surveillance, arrest and conveyance of the victim over the border, which culminated on 31 August 1995 at 10.47 in the arrest of HI at gunpoint.

On 13 August 1995, in an SIS building in Bratislava [...], defendant CD, in his capacity as Director of Service 46 of the SIS, in breach of Article 10(1) of Law 46/1993 and of Order 17/1994, gave an oral instruction to his subordinate, the Head of Division 1, defendant EF, to use technical means of intelligence-gathering within the meaning of Article 12(1)(c) of Law 46/1993, in breach of Article 13(2) of Law 46/1993, for the purposes of the surveillance of an individual named XY, which began at 10.30 on Hraničná Street, Bratislava [...] with the involvement of 13 SIS officers and using 8 private motor vehicles and technical means [of intelligence-gathering], supervising himself the surveillance although he was aware that the procedure was unlawful since he had not obtained the consent of the Director of the SIS, or of a person authorised by the latter, to use technical means of intelligence-gathering, and he acted before obtaining written authorisation from the duty judge of the former Mestský súd (Municipal Court) of Bratislava.

On 14 August 1995, after discussing the operation with the Director of Section 2 of the SIS on the basis of the surveillance file prepared the same day [...], he ordered junior officers of the SIS, defendants EF and IJ, to continue surveillance of XY until 26 August 1995.

On 24 August 1995, in breach of Order 17/1994 and Article 7(1) of Order 4/1994, he gave an oral instruction to defendant EF, Head of Division 1 of Service 46 of the SIS, to conduct surveillance of HI in the town of [...] and the surrounding area; from him he obtained information concerning the operational implementation and

the surveillance of HI which he himself conveyed to the Director of the SIS, defendant AB.

On 30 and 31 August 1995, he directed the surveillance, he personally provided information on the surveillance to the Director of Section 2 of SIS and the Director of SIS, defendant AB, by mobile phone where necessary; he received instructions from the latter and issued directions to officers of the Surveillance Division through defendant EF, who was in the town of [...].

Then, when on 31 August 1995 at 10.30 HI left his house in his private motor vehicle [...], he gave orders for HI to be followed and — after HI had been stopped and arrested at gunpoint — for the national road No II/502 to be blocked off by private motor vehicles of the surveillance unit.

Next, defendant EF, in his capacity as Head of Division 1 of Service 46 of the SIS, within the framework of the vertical chain of command, received on 13 August 1995, in an SIS building in Bratislava, from the Director of Service 46, defendant CD, the order to use operational means of intelligence-gathering within the meaning of Article 11 of Law 46/1993 and technical means of intelligence-gathering within the meaning of Article 12 of Law 46/1993 for the purpose of surveillance of XY and, in breach of Article 10(1) of Law 46/1993, of Order 17/1994 and of Article 7(1) of Order 4/1994, he ordered junior SIS officers **[Or. 8]** to follow XY in their private motor vehicles although he knew that the Director of the SIS or a person authorised by him under Article 11(2) had not taken the decision to use operational means of intelligence-gathering and that the use of technical means of intelligence-gathering within the meaning of Article 12(1)(c) had not been given prior authorisation by the duty judge of the former Mestský súd (Municipal Court), Bratislava under Article 13(2) of Law 46/1993.

On 27 August 1995 in an SIS building in Bratislava [...], in breach of Article 10(1) of Law 46/1993, of Order 17/1994 and of Article 7(1) of Order 4/1994, he ordered his deputy, defendant IJ, and other members of the division to keep watch on HI's family home from the motor vehicle [...] he had arranged to be parked in the town of [...] and to use SIS private motor vehicles for following HI's movements outside the town and to inform him of the results of the surveillance, although he knew that the use of operational means of intelligence-gathering within the meaning of Article 11(2) of Law 46/1993 had not been decided on by the Director of the SIS or by a person authorised by the latter and that the use of technical means of intelligence-gathering within the meaning of Article 12(1)(b) and (c) of Law 46/1993 [had not been approved] by the competent duty judge of the former Mestský súd (Municipal Court), Bratislava.

On 31 August 1995, in the town of [...], using a transmitter and a mobile phone, he gave instructions to junior SIS officers and informed the Director of Service 46 of the SIS, defendant CD, of the progress of the surveillance and then, when at 10.47

HI was arrested at gunpoint, he personally used his motor vehicle [...] to take part in blocking national road II/502 to stop approaching vehicles.

On 13 August 1995, in an SIS building in Bratislava, defendant IJ, an SIS officer and deputy to the Head of Division 1 of Service 6 of the SIS, then received, within the framework of the vertical chain of command, an oral instruction from the Director of Service 46 of the SIS and the Head of Division 1 to use operational means of intelligence-gathering within the meaning of Article 11 of Law 46/1993 and technical means of intelligence-gathering within the meaning of Article 12 of Law 46/1993 for the purposes of surveillance of XY, in breach of Article 10(1) of Law 46/1993, of Order 17/1994 and of Article 7(1) of Order 4/1994; he ordered junior SIS officers to follow XY in private motor vehicles, although he knew that the Director of the SIS or a person authorised by the latter under Article 11(2) of Law 46/1993 had not taken the decision to use operational means of intelligence-gathering and that the use of technical means of intelligence-gathering within the meaning of Article 12(1)(c) of Law 46/1993 had not received prior written authorisation from the competent duty judge of the former Mestský súd (Municipal Court), Bratislava, whilst he had personally directed the surveillance and informed the Director of Service 46 of the SIS, defendant CD, on the progress of the surveillance.

Next, after the order was received on 27 August 1995 from the Director of Service 46, through the Head of Division 1, to keep watch on HI in the town of [...], on 28 August 1995 a Mercedes-Benz [...] was parked on Nová Pezinská Street, from which SIS officers observed HI's house, reported by radio that he had left the house and followed his movements in motor vehicles, whilst reporting on the progress of the surveillance by mobile phone to the Head of Division 1, defendant EF.

On 31 August 1995, [IJ] carried out tasks as part of the abduction plan, by following HI in a private Toyota motor vehicle [...], after HI had left his house at 10.30 in a private motor vehicle [...] heading in the direction of Bratislava, [Or. 9] and then, after arresting him at gunpoint on national road II/502, he blocked the approach road in conjunction with other vehicles from the surveillance unit.

Defendant PR, in his capacity as an SIS officer, under an order from the Director of the SIS, defendant AB, organised over an unspecified number of days in August 1995 a group which included defendant ST, defendant UV, defendant WZ and defendant BC, and then assumed a coordinating role between the organisers of the abduction and the members of that group, together with whom on 29 August 1995, in the [...] car park in Bratislava, he picked up private motor vehicles belonging to the SIS, in which during the next few days he followed HI's movements in the towns of [...] with the intention of arresting him and handing him over to other SIS officers, who were to drive him into the Republic of Austria.

On 31 August 1995, at 10.30, after learning, as a result of information received from an SIS officer in the surveillance Mercedes-Benz [...], that HI had left his house heading in the direction of Bratislava, they joined the convoy of SIS private motor vehicles that were following HI. At 10.47, on national road II/502 [...], they stopped HI's private motor vehicle, blocking it in front with a Seat Toledo motor vehicle [...] and at the side with a Seat Ibiza [...].

At gunpoint, they requested HI to get out of the car and when he failed to do so they removed him by force and, although he put up some resistance, they put him into the back seat of the Seat Toledo. They placed a blue bag over his head and handcuffed him, and then seized his private Mercedes-Benz motor vehicle [...]. Afterwards, while they were travelling in the direction of Vajnory, HI attempted to jump out of the vehicle; they punched him in the face, applied electric shocks to his genitals using a taser and forced him to drink two bottles of whiskey, leaving him in a state of inebriation.

Defendant PR informed the Director of Unit 2 of the SIS by mobile phone how the operation had gone, and the latter passed that information on to defendant [...] AB. HI was taken to Bratislava via the [...] road and was handed over to other SIS officers.

Defendant GH, an SIS officer appointed to the post of Head of the Inspection Division of Section 2 of the SIS, within the framework of the vertical chain of command, carried out the instructions of the Director of the SIS, defendant AB, and of the Director of Section 2 of the SIS during the surveillance of XY although he knew that the Director of the SIS or a person authorised by the latter under Article 11(2) of Law 46/1993 had not taken the decision to use operational means of intelligence-gathering; and, on one occasion, he had accompanied that person from Bratislava to Levoča and back and had concealed his crossing of the Austria-Hungary border without the appropriate document; and on 30 and 31 August 1995, he had arranged for a border crossing without incident to be made at the border posts of Bratislava-Berg and Jarovce-Kittsee by defendants LM and NO, who drove the victim HI into Austria using the private Mercedes-Benz motor vehicle [...].

Defendant LM and defendant NO, officers of the Special Operations Service of Section 2 of the SIS, within the framework of the vertical chain of command, carried out the instructions of the Director of Section 2 of the SIS in that, on 30 August 1995 in Bratislava-Petržalka [...] they waited for HI's private motor vehicle, which they were due to drive into Austria. Since the plan was not carried out that day, on 31 August at 14.00, in the same place, they took over from defendant PR and defendant WZ the private Mercedes-Benz motor vehicle **[Or. 10]** [...], with HI lying unconscious on the back seat, and drove it through the diplomatic channel at the Petržalka-Berg border crossing.

Since the competent official from Austrian passport control was not present at the Berg car park, they made a telephone call to the Director of Section 2, who, on the order of defendant AB, gave the instruction to take the victim to Hainburg.

On the instructions of defendant AB, an SIS officer was sent to Austria and reported to the Hainburg police station the presence of a vehicle containing a person being sought. At 16.30, defendant AB informed ZZ by mobile phone that the victim was in a car in Hainburg and at 17.00, on the basis of a telephone call, HI was arrested by the Austrian police; the physical violence inflicted by the defendants had caused him minor injuries and his journey into Austria followed by his detention were in breach of Article 23(4) of the Constitution of the Slovak Republic, which states that no citizen can be forced to leave his country, be extradited or be surrendered to another State.

The victim HI suffered loss in connection with his stay in Austria in respect of the costs of his legal representation, totalling ATS 478 241.13.

2. On 6 September 1995, defendant DE, an SIS officer, on the instructions of his immediate superior, the Head of Division 1 of Service 46 of the SIS, EF, established with a police officer in the municipality of [...], from whom he requested official confirmation, that the white Mercedes Benz van [...] was in his district between 28 and 31 August 1995. After the police officer refused to comply with that request, on 13 September 1995, at approximately 13.00, it was arranged for a glazier in Bratislava [...] to produce transparent panes of glass costing SKK 2 766 to replace the opaque glass on the Mercedes-Benz 208 D, so that the witnesses in the criminal proceedings relating to HI's abduction to a foreign country would not recognise the vehicle as being the one that had been parked on the corner of [...] streets opposite house [...], from which SIS officers observed HI's house from 28 to 31 August 1995, although [DE] knew that on 31 August 1995, during the journey to Bratislava on national road II/502, HI's Mercedes had been stopped and seized by force and driven into Austria, where HI was arrested in his car in Hainburg by officers of the Austrian police force; he acted in that way with the intention of concealing the fact that SIS officers had committed an offence and in order to avoid criminal prosecutions for the individuals involved in the criminal offence of abduction.

2. By order of 14 June 2017, the Okresný súd (District Court) Bratislava III, pursuant to Article 23(3) of the Code of Criminal Procedure applicable until 31 December 2005, joined the abovementioned criminal case with the criminal case [...] brought against defendants AB, CD, FG, EF, IJ and JL, who were charged with the offence of abuse of power by a public official, in that they provided assistance within the meaning of Article 10(1)(c) and Article 158(1)(b) and (2)(c) of the Criminal Code applicable until 31 December 2005, which they are alleged to have committed in the following circumstances: AB, CD, FG, EF, IJ and JL, being officers of a public authority — the Slovenská informačná služba (Slovak Intelligence Service) — in breach of its powers as set out in Article 1(2) of Law 46/1993, of the duties as set out in Article 2 of Law 46/1993 and of the

obligations of SIS officers within the meaning of Article 7 of Law 46/1993, with the intention of concealing the disposal of the Mercedes that had been used during July 1995 for the surveillance of the restaurant owner UP in the municipality of [...] and during August 1995 for the surveillance of HI [Or. 11] in the town of [...], were involved in the infringement in that JF, assigned to Division 1 of Service 46 of the SIS, made a false statement although he knew that the private motor vehicle, Mercedes-Benz 208D [...] belonging to the SIS had not been stolen on the night of 18-19 December 1995 during an official journey that he did not make with IJ, a statement that provided a basis for unlawful conduct on the part of the committee of inquiry and of senior SIS officers; in his statement on the events of 28 December 1995, CD, the Director of Unit 94 of the SIS, supplied false information concerning the operation in Western Slovakia, his involvement at the place where the vehicle was stolen and the discovery of the registration plate of the Mercedes-Benz 208D; on 26 January 1996, by Order No 6, he set up the Unit 94 committee of inquiry in order to investigate the damage to the stolen official vehicle; FG, appointed Head of Motor Transport of Unit 94, as chairman of the committee, did not ensure that a detailed inquiry was conducted into the events that had taken place and, together with members of the committee [namely] EF, appointed Head of Division 1 of Service 46 of the SIS, and IJ, Head of Team 1 of Division 1 of Service 46 of the SIS, did not investigate the circumstances of the vehicle theft and, although they knew that the vehicle had not been stolen, they confirmed that the data were correct, reduced the value of the vehicle concerned and, on 7 February 1996, suggested to the Director of the SIS that the case should be suspended pending discovery of the motor vehicle and that after 10 years the loss should be charged to the State, which was approved by CD, Director of Unit 94 of the SIS, AB, Director of the SIS and the statutory representative, in breach of Article 3(2) of zákon č. 278/1993 Z.z. o správe majetku štátu v znení noviel (Law No 278/1993 on the management of State property, as amended), although he knew that the junior SIS officers had not reported the theft of the vehicle to the competent police authorities; he did not act in accordance with Article 8(1) of the Code of Criminal Procedure, did not take steps to establish whether an offence had actually been committed, endorsed the incorrect findings of the committee and approved the latter's proposal and CD's recommendation, and, by decision of 12 March 1996, adopted under Article 127(1) of zákon č. 410/1991 Zb. o služobnom pomere príslušníkov PZ (Law No 410/1991 on the terms of service of police officers), decided to close the case and write off the loss over a period of 10 years, and, at the end of that period, he authorised charging the loss to the State although the law governing the police force did not permit this, thereby causing the SIS to incur a loss amounting to SKK 1 454 434.

3. By order of 29 June 2001 [...], the Okresný súd (District Court) Bratislava III suspended prosecution of all the defendants on the ground that they were covered by an amnesty decreed by the President of the Government of the Slovak Republic of 3 March 1998. The abovementioned order was upheld on 5 June 2002 by the judgment of the Krajský súd (Regional Court), Bratislava and acquired the force of *res judicata*.

4. The referring court reopened the proceedings as a result of the judgment of the Ústavný súd Slovenskej republiky (Constitutional Court, Slovakia; ‘the Constitutional Court’) of 31 May 2017 [...], in which that court ruled that Resolution of the Národná rada Slovenskej republiky (National Council of the Slovak Republic; ‘the National Council of the Slovak Republic’) No 570 of 5 April 2017 repealing Article V and Article VI of the Decision of the President of the Government of the Slovak Republic of 3 March 1998 decreeing an amnesty, published under No 55/1998, the Decision of the President of the Government of the Slovak Republic of 7 July 1998 decreeing an amnesty, published under No 214/1998, and the Decision of the President of the Slovak Republic of 12 December 1997 granting pardon to an accused person [...] were in conformity with the Constitution of the Slovak Republic.
5. After the reopening of the proceedings, the defence made an application to the referring court that it stay the proceedings and submit a request for a preliminary ruling to the Court of Justice concerning the interpretation of Article 47, Article 48(2) and Article 50 of the Charter of Fundamental Rights of the European Union (‘the Charter’), and of Framework Decision 2002/584, in conjunction with the relevant articles of Directive 2012/13 [Or. 12] (on the right to information in criminal proceedings) and of Directive 2016/343 (on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings).
6. That application is based on legal inaccuracies in the national legislation adopted, specifically the provisions of Section 6 of the Zákon o Ústavnom súde (Law relating to the Constitutional Court) (specifically Articles 48a and 48b), the provisions of Ústavný zákon č. 71/2017 (Constitutional Law No 71/2017) and of the Uznesenie Národnej rady Slovenskej republiky z 5. apríla 2017 číslo 570 o zrušení článku V a článku VI rozhodnutia predsedu vlády Slovenskej republiky z 3. marca 1998 o amnestii uverejneného pod číslom 55/1998 Z. z., rozhodnutia predsedu vlády Slovenskej republiky zo 7. júla 1998 o amnestii uverejneného pod číslom 214/1998 Z. z. a rozhodnutia prezidenta Slovenskej republiky v konaní o milosť pre obvineného zo dňa 12. decembra 1997 č. k. 3573/96-72-2417 (Resolution of the National Council of the Slovak Republic No 570 of 5 April 2017 repealing Article V and Article VI of the Decision of the President of the Government of the Slovak Republic of 3 March 1998 decreeing an amnesty, published under No 55/1998, the Decision of the President of the Government of the Slovak Republic of 7 July 1998 decreeing an amnesty, published under No 214/1998 and the Decision of the President of the Slovak Republic granting pardon to an accused person of 12 December 1997 with the reference 3573/96-72-2417; ‘the Resolution’). The Resolution in question was intended to revoke the amnesties that provided the basis for the adoption of, inter alia, the order discontinuing the prosecution of AB and Others, that is to say, the order of the Okresný súd (District Court) Bratislava III [...] of 29 June 2001 and the order of the Krajský súd (Regional Court), Bratislava [...]. In the case in question, a public prosecution had also been brought against ST [...] who was to be the subject of a

national arrest warrant, a European arrest warrant and an international arrest warrant.

7. After examining the documents before it, the referring court, being a national court, considers that a decision of the Court of Justice is necessary to enable it to give judgment (Article 267, second paragraph, TFEU).

II. Legal background

A. EU law

8. Article 82[(1)] TFEU provides:

‘Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

- (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
 - (b) prevent and settle conflicts of jurisdiction between Member States;
 - (c) support the training of the judiciary and judicial staff;
 - (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.
9. [Article 82(2) TFEU provides] ‘To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. **[Or. 13]**
 10. [Paragraph 2 continued] Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

- (a) mutual admissibility of evidence between Member States;
- (b) the rights of individuals in criminal procedure;
- (c) the rights of victims of crime;

- (d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.’

11. [Article 82(3) TFEU provides] ‘Where a member of the Council considers that a draft directive as referred to in paragraph 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply’.

12. Article 47 of the Charter provides:

‘Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.’

13. Article 48(2) of the Charter provides:

‘Respect for the rights of the defence of anyone who has been charged shall be guaranteed.’

14. Article 50 of the Charter provides:

‘No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.’

15. Article 1(1) of Framework Decision 2002/584 provides:

‘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.’

16. Article 1(2) of Framework Decision 2002/584 provides: **[Or. 14]**

‘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.’

17. Article 1(3) of Framework Decision 2002/584 provides:

‘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.’

18. Article 3 of Framework Decision, entitled ‘Grounds for mandatory non-execution of the European arrest warrant’, provides:

‘The judicial authority of the Member State of execution (hereinafter “executing judicial authority”) shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.’

19. Article 7 of Directive 2012/13 provides:

‘1. Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.’

2. Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.

3. Without prejudice to paragraph 1, access to the materials referred to in paragraph 2 shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.

4. By way of derogation from paragraphs 2 and 3, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted. Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this paragraph is taken by a judicial authority or is at least subject to judicial review.

5. Access, as referred to in this Article, shall be provided **[Or. 15]** free of charge.'

20. Article 8(2) of Directive 2012/13 provides:

'Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.'

21. Article 8(1) of Directive 2016/343 provides:

'Member States shall ensure that suspects and accused persons have the right to be present at their trial.'

22. Article 9 of Directive 2016/343 provides:

'Member States shall ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, they have the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision being reversed. In that regard, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.'

23. Article 10(1) of Directive 2016/343 provides:

‘Member States shall ensure that suspects and accused persons have an effective remedy if their rights under this Directive are breached.’

24. Article 14(1) of Directive 2016/343 provides:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 2018. They shall immediately inform the Commission thereof.’

B. Slovak law

25. Under Article 86(i) (in force since 4 April 2017) of the Constitution of the Slovak Republic, the Národná rada Slovenskej republiky (National Council of the Slovak Republic; ‘the National Council of the Slovak Republic’) is to have jurisdiction, inter alia:

‘to rule on the annulment of a decision of the President adopted in pursuance of Article 102(1)(j), if that decision is contrary to the principles of a democratic State governed by the rule of law; the resolution adopted shall have general scope, and shall be published in the same way as a law.’

26. Article 129a of the Constitution of the Slovak Republic (in force since 4 April 2017) provides that the Ústavný súd Slovenskej republiky (Constitutional Court, Slovak Republic; ‘the Constitutional Court’) has the following power:

‘The Constitutional Court shall rule on the constitutionality of a resolution of the National Council of the Slovak Republic revoking an amnesty or an individual pardon adopted under Article 86(i). The Constitutional Court shall institute proceedings of its own motion under the first sentence; Article 125 shall apply *mutatis mutandis*.’ **[Or. 16]**

27. Article 154f of the Constitution of the Slovak Republic (in force since 4 April 2017) also provides for the following retroactive effects:

‘(1) The provisions of Article 86(i), Article 88a and Article 129a shall also apply to Article V and Article VI of the Decision of the President of the Government of the Slovak Republic of 3 March 1998 decreeing an amnesty, published under No 55/1998, the Decision of the President of the Government of the Slovak Republic of 7 July 1998 decreeing an amnesty, published under No 214/1998 and the Decision of the President of the Slovak Republic of 12 December 1997 granting pardon to an accused person, No [...].

(2) Revocation of amnesties and pardons under paragraph 1

- (a) shall entail annulment of decisions of public authorities in so far as they have been adopted and substantiated on the basis of amnesties and pardons as referred to in paragraph 1, and
- (b) shall remove legal obstacles to prosecutions based on amnesties and pardons as referred to in paragraph 1; the duration of such legal obstacles shall not be included in the calculation of the limitation periods in respect of the acts covered by amnesties and pardons as referred to in paragraph 1.’
28. Articles 48a and 48b of Section 6 of the *Zákon o ústavnom súde* (Law on the Constitutional Court) (in force since 4 April 2017) govern as follows proceedings relating to the constitutionality of a resolution of the National Council of the Slovak Republic revoking individual pardons or amnesties:
- ‘Article 48a
- The provisions of Articles 19 to 41b shall apply *mutatis mutandis* to proceedings relating to review of a resolution of the National Council of the Slovak Republic, save where Article 48b provides otherwise.
- Article 48b
- (1) The Constitutional Court shall of its own motion institute the main proceedings under Article 129a of the Constitution, with the proceedings commencing on the day of the publication in the *Zbierka zákonov* (Official Journal) of the resolution adopted by the National Council of the Slovak Republic under Article 86(i) of the Constitution.
- (2) The National Council of the Slovak Republic shall be the only party to the proceedings.
- (3) The Government of the Slovak Republic, represented by the Minister for Justice of the Slovak Republic, shall be permitted to intervene in the proceedings if they relate to a resolution revoking an amnesty, or the President of the Slovak Republic if the proceedings relate to a resolution revoking an individual pardon.
- (4) Before a decision is taken on the merits of the case under the present Section, the President of the Constitutional Court shall seek
- (a) the opinion of the National Council of the Slovak Republic, together with the record of the discussion that took place at its meeting concerning the resolution adopted by the National Council of the Slovak Republic under Article 86(i) of the Constitution,
- (b) the opinion of the President of the Slovak Republic, and

- (c) the opinion of the Government of the Slovak Republic; the opinion on behalf of the Government [Or. 17] of the Slovak Republic shall be delivered by the Minister for Justice of the Slovak Republic.
- (5) The plenary session shall rule on the substance of the case in the form of a judgment. The judgment shall be notified to the National Council of the Slovak Republic and the Government of the Slovak Republic in the case of an amnesty, and to the President in the case of an individual pardon. The President of the Constitutional Court may decide to notify the judgment to other persons also.
- (6) The Constitutional Court shall rule on the constitutionality of a resolution, or of any part of a resolution, of the National Council of the Slovak Republic revoking an amnesty or an individual pardon,, within a period of 60 days from the start of the proceedings; if the Constitutional Court does not rule within that period the proceedings shall be discontinued.
- (7) The order discontinuing the proceedings or rejecting the application shall have the force of *res judicata*, which shall exclude further examination by the Constitutional Court of the resolution of the National Council of the Slovak Republic revoking an amnesty or an individual pardon.’
29. Article 1(1) of zákon č. 15[4]/2010 Z.z. o európskom zatykácom rozkaze v znení neskorších predpisov (Law No 153/2010 on the European arrest warrant, as amended; ‘Law 153/2010’) provides:
- ‘This Law governs the conduct of the Slovak authorities in the event of the surrender of persons between Member States of the European Union pursuant to a European arrest warrant, and the relevant proceedings.’
30. Article 5(1) to (3) of Law 15[4]/2010 provides:
- ‘(1) Where there is reason to suppose that the accused person is, or may be, living in another Member State and if it is necessary to search for him, the President of the Chamber, or the judge of the competent court, shall issue a European arrest warrant against him. In the context of an investigation, the European arrest warrant shall be issued by the investigating judge at the request of the State prosecutor.
- (2) A European arrest warrant within the meaning of paragraph 1 may be issued if the accused person is the subject, in respect of the same acts, of an arrest warrant, an international arrest warrant, or of a final and enforceable decision imposing a custodial sentence.
- (3) The court having jurisdiction shall not issue a European arrest warrant where it is apparent, before that warrant is issued, that surrender by another country would cause the person sought disproportionate harm in relation to the significance of the criminal proceedings or the consequences of the offence.’

31. Article 23(1)(a) and (b) of Law 15[4]/2010 provides:
- ‘(1) Execution of a European arrest warrant shall be refused where
- (a) the offence in respect of which the European arrest warrant has been issued is covered by an amnesty granted in the Slovak Republic and the Slovak legal order governs the power of the Slovak authorities to prosecute that offence,
 - (b) the executing judicial authority is informed that a case that has been conducted in a Member State against the person sought for the same offence has been finally closed by a sentence that has been served or is currently being served or may no longer be executed under the legal provisions of the sentencing Member State ...’ **[Or. 18]**
32. Under Article 188(1) of the Code of Criminal Procedure applicable until 31 December 2005, after a preliminary examination of the charge, the court is to
- (a) transfer the case to the court having jurisdiction if it does not have jurisdiction itself to hear the case,
 - (b) transfer the case to another authority in the circumstances referred to in Article 171(1),
 - (c) discontinue the prosecution in the circumstances referred to in Article 172(1),
 - (d) suspend the proceedings in the circumstances referred to in Article 173(1)(a) to (e), or under Article 224(6) or (7),
 - (e) refer the case to the public prosecutor for further investigation where this is necessary in order to eliminate serious procedural flaws in the investigation or to clarify basic factual circumstances where otherwise it would not be possible to give a ruling in the main proceedings and if further measures of investigation in the judicial proceedings would encounter significant difficulties or would clearly affect the speed of the proceedings,
 - (f) discontinue prosecution under certain conditions in pursuance of Article 307, or rule on the approval of conciliation in pursuance of Article 309, or
 - (g) refer the case to be heard by a single judge if the latter has jurisdiction by virtue of Article 314a(1); the single judge shall be bound by that decision.
33. Under Article 188(2) of the Code of Criminal Procedure applicable until 31 December 2005, after a preliminary examination of the charge, the court may also discontinue the prosecution in the circumstances referred to in Article 172(2) or (3).

34. Under Article 188(3) of the Code of Criminal Procedure applicable until 31 December 2005, after a preliminary examination of the charge, the court may also suspend the prosecution in the circumstances referred to in Article 173(2).
35. Under Article 188(4) of the Code of Criminal Procedure applicable until 31 December 2005, the public prosecutor and the accused person may bring an appeal against a decision adopted under paragraph 1(a) to (f), or under paragraphs 2 or 3, an appeal which shall have suspensory effect besides suspending the prosecution.
36. Under Article 224(1) of the Code of Criminal Procedure applicable until 31 December 2005, the court is to suspend the prosecution if it establishes during the main hearing that one of the circumstances provided for in Article 173(1)(b) to (e) has arisen.
37. Under Article 224(2) of the Code of Criminal Procedure applicable until 31 December 2005, the court is to suspend the prosecution even where it is not possible to serve notice on the defendant that he is required to attend the main proceedings.
38. Under Article 224(3) of the Code of Criminal Procedure applicable until 31 December 2005, the court may suspend the prosecution if it establishes during the main hearing that the circumstances provided for in Article 173(2) have arisen.
39. Under Article 224(4) of the Code of Criminal Procedure applicable until 31 December 2005, if the ground for suspension no longer exists, the court is to resume the proceedings. **[Or. 19]**
40. Under Article 224(5) of the Code of Criminal Procedure applicable until 31 December 2005, the public prosecutor may lodge an appeal against the court's decision suspending the prosecution or rejecting the application to continue the prosecution.
41. Under Article 224(6) of the Code of Criminal Procedure applicable until 31 December 2005, the court is to suspend the prosecution if it considers that a general, lower-ranking legal provision, the application of which in the criminal case in question is decisive in order to rule on the matter of guilt and the appropriate penalty, conflicts with a general, higher-ranking legal provision or an international treaty, and is to bring proceedings before the Constitutional Court. The judgment of the Constitutional Court is binding on that court and on other ordinary courts.
42. Under Article 224(7) of the Code of Criminal Procedure applicable until 31 December 2005, the court is to suspend the prosecution if it submits a request for a preliminary ruling to the Court of Justice [of the European Union].
43. Under Article 564(1) of the Code of Criminal Procedure applicable with effect from 1 January 2006, prosecutions begun before the entry into force of the present

law and acts done in the context of those prosecutions are to have the same effects as prosecutions begun and acts done under the present law.

44. Under Article 564(3) of the Code of Criminal Procedure applicable with effect from 1 January 2006, in cases in which reference to a district court was made before the entry into force of the present law, the district court is to conduct the proceedings under the provisions applicable up until that time. Ordinary appeal proceedings against such a decision are to be conducted by the regional court under the provisions applicable up until that time. The same procedure is to be followed where a court which lacks jurisdiction has transferred the case to a district court for the purposes of conducting the proceedings.
45. Since the order referring the abovementioned person for trial was made on 27 November 2000, the district court must, pursuant to the statutory amendment, proceed in accordance with the provisions of Code of Criminal Procedure No 141/1961 that was in force until 31 December 2005.

III. Facts

46. ST and others, including AB, were the subject of criminal prosecutions finally closed by the decision of Okresný súd (District Court) Bratislava III of 29 June 2001, in Case 5T 119/00, which has acquired the force of *res judicata* and is enforceable. According to Slovak law, it is a final decision, which is a decision on the substance and which has the effects of a judgment of acquittal. The grounds for the order discontinuing the prosecutions included the amnesty granted on 3 March [1998] by the President of the Government of the Slovak Republic representing the President of the Slovak Republic.
47. The main consequence of the amendments adopted in 2017 — by Constitutional Law No 71/2017 and the amendment of the Law on the Constitutional Court (Law No 72/2017) — was the judgment of the Constitutional Court [...] of 31 May 2017, which stated as follows:

‘Resolution of the Národná rada Slovenskej republiky (National Council of the Slovak Republic) No 570 of 5 April 2017 repealing Article V and Article VI of the Decision of the President of the Government of the Slovak Republic of 3 March 1998 decreeing an amnesty, published under No 55/1998, the Decision of the President of the Government of the Slovak Republic of 7 July 1998 decreeing an amnesty, published under No 214/1998 and the Decision of the President of the Slovak Republic granting pardon to an accused person of 12 December 1997 [Or. 20] [...] is in conformity with the Constitution of the Slovak Republic.’
48. By reason of those new legislative amendments it was necessary to annul also the final order discontinuing the prosecution of ST and Others (including AB).
49. The circumstances of the present case justify issuing a national arrest warrant and also a European arrest warrant. In the present case, the referring court, at the

request of the Krajská prokuratúra (Regional Prosecutor's Office), Bratislava, issued an international arrest warrant, since, according to information reported in the media (to which the public prosecutor referred in his request for an international arrest warrant), ST may be in the Republic of Mali. Since the referring court has no relevant details as to where ST is currently living, and it cannot be ruled out that ST is, or will be, also in the territory of a Member State of the European Union, the referring court intends to issue a European arrest warrant also. However, before issuing such a warrant it is necessary, in the light of the case-law of the Court of Justice, to issue a national arrest warrant in addition, as otherwise the European arrest warrant will not be valid (see, for example, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385).

50. Since the referring court is uncertain as to whether the *ne bis in idem* principle precludes the issuing of a European arrest warrant, it requests an interpretation from the Court of Justice.

IV. Legal assessment

A. Applicability of the Charter of Fundamental Rights of the European Union

51. The Charter is applicable in the present case. See in that regard the considerations put forward by Advocate General Kokott [in point 29] of the Opinion delivered on 30 March 2017 in Case C-73/16, *Pušár*:

‘... Article 51(1) of the Charter ... states that the fundamental rights guaranteed in the Union legal order apply in all situations governed by EU law.¹ As the judgment in *Åkerberg Fransson* in particular has established, the Charter is applicable to penalties in the area of taxation law, in so far as it relates to fiscal provisions of EU law.² Particular attention must be given in this case to VAT and excise duties. But specific questions of direct taxation are also subject to EU law, as in the area of specific harmonisation measures³ or when fundamental freedoms are restricted.⁴ Consequently, in individual cases, a national court may frequently be required to assess whether the Charter is applicable. In so far as EU law and the Charter are not applicable, comparable requirements will frequently arise under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (“the ECHR”).

¹ Judgments of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraph 19), and of 17 December 2015, *WebMindLicenses* (C-419/14, EU:C:2015:832, paragraph 66).

² Judgment of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraph 27).

³ See, inter alia, judgment of 22 October 2013, *Sabou* (C-276/12, EU:C:2013:678, paragraph 23 *et seq.*).

⁴ Judgment of 11 June 2015, *Berlington Hungary and Others* (C-98/14, EU:C:2015:386, paragraph 74 and the case-law cited).

52. [Point 30 of the abovementioned Opinion] For these proceedings, it follows that the use of the list for the purposes of tax collection is subject to the Data Protection Directive and the Charter, while only the Charter is applicable in the field of [Or. 21] criminal law, in so far as it involves questions determined by EU law.’
53. Article 51, which defines the scope of the Charter, states in paragraph 1 that the provisions of the Charter ‘are addressed to the Member States only when they are implementing EU law’, and in paragraph 2 that the Charter ‘does not extend the field of application of Union law beyond the powers of the Union’. In that regard, the Court of Justice has held that ‘in order to determine whether national legislation involves the implementation of EU law for the purposes of Article 51 of the Charter, some of the points to be determined are whether that legislation is intended to implement a provision of EU law; the nature of that legislation and whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law; and also whether there are specific rules of EU law on the matter or capable of affecting it’ (judgment of 6 March 2014, *Siragusa*, C-206/13, EU:C:2014:126, paragraph 25).
54. There can be no doubt that EU law applies in the present case since Framework Decision 2002/584 applies in this case.
55. In that regard, it should be noted that the Framework Decision, by the establishment of a simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, facilitates and accelerates judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice, founded on the high level of confidence which should exist between the Member States, in accordance with the principle of mutual recognition (see, to that effect, judgments of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraphs 36 and 37; and of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 75 and 76).
56. Also applicable are the Charter and Directive 2012/13 (on the right to information in criminal proceedings) and Directive 2016/343 (on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings).

B. First question

57. By its first question, the referring court seeks an interpretation of whether the *ne bis in idem* principle precludes [the issuance] of a European arrest warrant in the present case.
58. First, the referring court observes that, although it would appear at first sight that the question raised should have been referred by the executing court, and not by

the court of the issuing State, which would indicate a hypothetical question, that is not the case.

59. A European arrest warrant (EAW) must always be in proportion to its objective. That is so also where the circumstances of the case come within Article 2(1) de la Framework Decision 2002/584. In view of the serious implications that execution of an EAW has for the freedom of the requested person and the restriction of freedom of movement, when deciding whether or not an EAW is to be issued, the issuing Member State should weigh up the need to issue it and therefore assess also any potential obstacles to the future execution of the EAW. The above considerations are also clear from [Section 2.4, fourth paragraph of] the Commission Notice entitled ‘Handbook on how to issue and execute a European arrest warrant’ (OJ 2017 C 335/1): ‘Furthermore, issuing judicial authorities should consider whether other judicial cooperation measures could be used instead of issuing an EAW. Other Union legal instruments on judicial cooperation in criminal matters provide for other measures that in many situations, are effective but less coercive (see Section 2.5).’ [Or. 22]
60. It is apparent from the case-law of the Court of Justice that one of the checking mechanisms when an EAW is issued is the requirement to issue a national arrest warrant (judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385). Therefore, if a national court issues an EAW without issuing a national arrest warrant, the EAW is not valid and cannot be executed.
61. As the Court of Justice noted in the judgment cited above, the EAW system comprises a dual level of protection for procedural rights and fundamental rights, which must apply to the requested person: the judicial protection provided at the first level, at which a national judicial decision is adopted, and the protection afforded at the second level, at which a European arrest warrant is issued. That dual level of judicial protection is lacking in a situation in which, prior to the issue of an EAW, no decision has been taken by a national judicial authority on the basis of which the EAW could have been executed.
62. The crux of the question referred lies in whether a final decision putting an end to a criminal prosecution (or a judgment of acquittal) is always covered by the *ne bis in idem* principle where such a decision has been taken on the basis of an amnesty revoked by a legislative authority after the decision has acquired the force of *res judicata* and the national legal order provides that the revocation of such an amnesty entails the annulment of decisions of public authorities where they have been adopted and substantiated on the basis of the revoked amnesty and without a specific court judgment or judicial proceedings.
63. The substance of the case therefore concerns whether, in the present case, it is possible for the fundamental right not to be tried or punished twice, as guaranteed by the Charter, to be undermined as a result of a national mechanism annulling final decisions in criminal matters adopted directly by a legislative body without any court judgment and without any involvement of the individuals concerned. In

other words, the question is whether the fact that a legislative body ‘is associated’ with the decision on guilt and sentencing in a situation where that mechanism is compatible with the domestic legal order complies with EU law. Or whether, in the light of EU law, a national court is required to respect the revocation of an amnesty which, although it complies with the national legal order, does not comply with EU law.

C. Second question

64. By its second question, the referring court asks the Court of Justice whether Directive [2012/13] applies also to particular proceedings, the subject matter of which is the revocation of an amnesty, in so far as they are ‘a national mechanism’ for revoking an amnesty.
65. Article 2 [of Directive 2012/13], entitled ‘Scope’, provides: ‘This Directive applies from the time persons are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal.’
66. Article 3 [of Directive 2012/13], entitled ‘Right to information about rights’, provides, in paragraph 1([c]): ‘Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively: ... the right to be informed of the accusation, in accordance with Article 6’. **[Or. 23]**
67. Article 6 [of Directive 2012/13], entitled ‘Right to information about the accusation’, provides in paragraph 4: ‘Member States shall ensure that suspects or accused persons are informed promptly of any changes in the information given in accordance with this Article where this is necessary to safeguard the fairness of the proceedings’.
68. Article 7 [of Directive 2012/13], entitled ‘Right of access to the materials of the case’, provides in paragraph 1: ‘Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.’
69. The directive cited above is based on Article 82 TFEU, which lays down the minimum rules that must apply in the European Union; recitals 9, 10 and 11 of that directive read as follows:

70. 'Article 82(2) of the Treaty on the Functioning of the European Union provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. That Article refers to "the rights of individuals in criminal procedure" as one of the areas in which minimum rules may be established.'
71. 'Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be established in the field of information in criminal proceedings.'
72. 'On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (4) (hereinafter "the Roadmap"). Taking a step-by-step approach, the Roadmap called for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is only indicative and thus implies that it may be changed in accordance with priorities. The Roadmap is designed to operate as a whole; only when all its component parts have been implemented will its benefits be felt in full.'
73. That directive guarantees the accused person, at each stage in the criminal proceedings, the right to all the information relating to the criminal proceedings in so far as it is needed in order to ensure a fair trial, and the right of access to the materials of the case, whereas the national law relating to the position of the party in the proceedings before the National Council of the Slovak Republic and in the proceedings before the Constitutional Court prevents the party from exercising his fundamental procedural rights. In that regard, it is appropriate to note the particular nature of proceedings concerning the question of the lawfulness of a decision revoking an amnesty, which also entails the annulment of an individual legal act; in the present case the order discontinuing the criminal prosecution is indisputably such a decision. That is why the referring court considers that the proceedings revoking the amnesty (before the National Council of the Slovak Republic and the Constitutional Court of the Slovak Republic) come within the scope of the directive cited above and that those proceedings therefore constitute 'a stage of the criminal proceedings' within the meaning of Directive [2012/13], although the national legislation does not guarantee fundamental rights within the meaning of that directive. **[Or. 24]**
74. In its judgment of 21 October 2015, *Frisancho Perea v. Slovakia* [...], the European Court of Human Rights criticised the proceedings relating to an individual constitutional appeal that took place without the persons concerned being parties to the proceedings before the Constitutional Court of the Slovak

Republic. It was in fact following that judgment that the amendment of zákon č. 38/1993 Z.z o Ústavnom súde (Law No 38/1993 on the Constitutional Court) was adopted, which gave the persons concerned procedural rights similar to those of the parties to the proceedings.

D. Third question

75. By its third question, the referring court asks the Court of Justice whether provisions of domestic law which limit examination by the Constitutional Court solely to the question of compliance with domestic law are compatible with the fundamental rights guaranteed by the ECHR and with the Charter, but especially with the principle of sincere cooperation (resulting from Article 4(3) TEU), it being understood that, under that provision, that obligation is equally applicable to relations between Member States and the European Union (see Opinion 2/13 of the Court of Justice, EU:C:2014:2454, paragraph 202).
76. Similarly, the referring court is of the view that the ‘national mechanism’ of revoking an amnesty may potentially conflict with the principle of proportionality and in particular with the principle of effectiveness, which limits the procedural autonomy of Member States when adopting domestic legal provisions.

E. Need for an urgent procedure

77. Since the case in question concerns a European arrest warrant, the referring court asks the Court of Justice to apply Article 107 of the Rules of Procedure and to deal with the application under the urgent preliminary ruling procedure. The referring court makes reference first of all to Article 17(1) of Framework Decision 2002/584, which states that ‘a European arrest warrant shall be dealt with and executed as a matter of urgency’.
78. In accordance with the Recommendations of the Court of Justice [to national courts and tribunals, in relation to the initiation of preliminary ruling proceedings (OJ 2016 C 439, p. 1)], the file of the criminal case pending before the referring court will be sent through the Ministry of Foreign and European Affairs of the Slovak Republic.

Okresný súd Bratislava III

11 May 2020

[signed]