

**Case C-412/20 PPU**

**Request for a preliminary ruling**

**Date lodged:**

3 September 2020

**Referring court:**

Rechtbank Amsterdam (Netherlands)

**Date of the decision to refer:**

3 September 2020

**European arrest warrant issued against:**

P

**Other party to the procedure:**

Openbaar Ministerie

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**RECHTBANK AMSTERDAM (DISTRICT COURT, AMSTERDAM)**

**INTERNATIONALE RECHTSHULPKAMER (CHAMBER FOR  
INTERNATIONAL COOPERATION IN LEGAL MATTERS)**

[...]

**Date of the decision: 3 September 2020**

**INTERLOCUTORY  
DECISION**

on the application pursuant to Article 23 of the Overleveringswet (Law on the Surrender of Sentenced Persons; ‘the OLW’), lodged by the officier van justitie (public prosecutor) attached to this Rechtbank. The date of the application is 23 June 2020 and it relates to, inter alia, the examination of a European arrest warrant (‘EAW’).

That EAW was issued on 26 May 2020 by the *Sąd Okręgowy w Sieradzu* (the Circuit Court in Sieradz) (Poland) and seeks the detention and surrender of:

**P,**

born in \*\*\* on \*\*\*,

\*\*\*,

\*\*\*,

hereinafter ‘the requested person’.

## **1. Procedure**

Prior to the hearing, the Rechtbank asked Legal Counsel, mr. T.E. Korff, lawyer in Amsterdam, and the officier van justitie, mr. C.L.E. McGivern, to provide written submissions setting out their respective positions.

By e-mail of 17 August 2020, Counsel requested the Rechtbank to stay the proceedings. Referring to the decision of this Rechtbank of 31 July 2020,<sup>1</sup> she requested the Rechtbank to await the answers of the Court of Justice of the European Union (‘the Court of Justice’) to the questions referred for a preliminary ruling by the Rechtbank in that decision. By e-mail of 18 August 2020, the officier van justitie did not oppose the staying of the proceedings, as requested by Counsel.

Subsequently, by e-mail of 18 August 2020, the Rechtbank sent Counsel and the officier van justitie this Rechtbank’s decision of 18 August 2020.<sup>2</sup> In that decision [**Or. 2**], the Rechtbank explained the consequences of the questions referred for a preliminary ruling by the aforementioned decision of 31 July 2020 for surrender cases involving execution EAWs coming from Poland.

Op 19 August 2020 the Rechtbank informed Counsel and the officier van justitie that at the hearing on 20 August 2020 the possibility would be mooted of referring a ‘supplementary’ question to the Court of Justice for a preliminary ruling.

The claim of the officier van justitie was considered at the public hearing held on 20 August 2020. The hearing took place in the presence of the officier van justitie. The requested person was assisted by his Counsel and by a Polish-language interpreter.

<sup>1</sup> ECLI:NL:RBAMS:2020:3776

<sup>2</sup> ECLI:NL:RBAMS:2020:4032

The Rechtbank extended by 30 days the period within which it was obliged to hand down a decision under Article 22(1) of the OLW because it required that additional time in order to reach a decision on the requested surrender.

## 2. Question referred for a preliminary ruling

### 2.1 Introduction

1. The Rechtbank Amsterdam is required to take a decision on the execution of an EAW relating to a national of the Republic of Poland.

2. The EAW was issued on 26 May 2020 by the *Sąd Okręgowy w Sieradzu* (the Circuit Court in Sieradz) (Poland) and seeks surrender for the purpose of giving effect to a custodial sentence of one year. According to the EAW, seven months and 26 days remain of that sentence.

The requested person was convicted on four counts of threatening behaviour and one of ill-treatment, each of which he committed within a period of 5 years after having served a custodial sentence of at least 6 months for a similar offence.

3. The EAW is based on a judgment of the *Sąd Rejonowy w Wieluniu* (the District Court in Wieluń) of 18 July 2019.

4. By interlocutory decision of 31 July 2020<sup>3</sup> in a separate case (C-354/20 PPU), the Rechtbank referred questions for a preliminary ruling to the Court of Justice concerning the independence of Polish judges in relation to – inter alia – the issuing of an EAW. The first question posed in the aforementioned interlocutory decision relates specifically to the issue of an EAW. The provisions of EU law and national law mentioned in paragraph 3.1 of that interlocutory decision also apply in the present case.

### 2.2 Question referred for a preliminary ruling [Or. 3]

5. The present case differs from Case C-354/20 PPU in that it relates to an EAW concerning the execution of a custodial sentence imposed on the requested person in Poland and in that the EAW was issued on 26 May 2020, that is to say, following the developments outlined in point 9 of section 3.2 of the aforementioned interlocutory decision, which is indicative of further increased pressure on the independence of the judicial authorities in Poland.

6. In the light of the conclusions drawn in point 10 of section 3.2 of the interlocutory decision of 31 July 2020, the Rechtbank considers that the court that issued the EAW in question, which forms part of the ordinary courts in Poland, does not meet – and at the time of issuing the EAW already no longer met – the

<sup>3</sup> ECLI:NL:RBAMS:2020:3776, Case C-354/20 PPU

requirements of effective judicial protection/actual judicial protection, because Polish law does not guarantee independence of that court from the legislative and/or executive power and already no longer guaranteed it at the time when the EAW was issued.

7. In section 3.3 of the interlocutory decision of 31 July 2020, under points 12 to 16, the Rechtbank explained that, in its view, a court issuing an EAW must meet the requirements of effective judicial protection/actual judicial protection, which requires the existence of rules that provide protection against external pressure or influence that might compromise the independence of that court's judgment in the cases submitted to it. In its view, it makes no difference whether the EAW relates to a criminal prosecution or, as in the present case, to the execution of a custodial sentence. It finds support for this view in the judgment *Openbaar Ministerie (Procureur des Konings te Brussel)*, which concerns an EAW for the purposes of the execution of a custodial sentence and in which the Court of Justice – without making a distinction between the two modalities – held as follows:

‘In particular, the second level of protection of the rights of the person concerned requires that the issuing judicial authority review observance of the conditions to be met when issuing the EAW and examine objectively – taking into account all incriminatory and exculpatory evidence *and without being exposed to the risk of being subject to external instruction, in particular from the executive* – whether it is proportionate to issue that warrant (see, to that effect, judgment of 27 May 2019, *OG and PI (Public Prosecutors' Offices in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraphs 71 and 73).<sup>4</sup>

8. The question whether, in such circumstances, the executing judicial authority should execute an EAW issued by such a court has not previously been brought before the Court of Justice. The Rechtbank leaves aside the question whether this is an instance of so-called ‘*acte clair*’. From the point of view of uniformity and because of the far-reaching consequences that an affirmative answer to that question would have – such an answer would de facto amount to suspending the surrender traffic with Poland until Polish law once again guarantees the independence of issuing courts – it is **[Or. 4]** necessary that the Rechtbank should not decide on the execution of the EAW until after the Court of Justice has answered that question.

9. The Rechtbank therefore refers the following question to the Court of Justice:

<sup>4</sup> Judgment of the Court of Justice of 12 December 2019, C-627/19 PPU, ECLI:EU:C:2019:1079 (*Openbaar Ministerie (Procureur des Konings te Brussel)*), paragraph 31 (italics added). Compare also the beginning of paragraph 32: ‘As regards a European arrest warrant issued for the purposes of conducting criminal proceedings ...’.

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

### **3. Request for the application of the urgent procedure**

3.1 The Rechtbank requests the Court of Justice to deal with this request for a preliminary ruling under the urgent procedure as referred to in the fourth paragraph of Article 267 of the Treaty on the Functioning of the European Union ('TFEU') and in Article 107 of the Rules of Procedure.

3.2 The question referred for a preliminary ruling relates to an area as referred to in Title V of Part Three of the FEU Treaty. The requested person is currently in detention for the purpose of serving a custodial sentence imposed in the Netherlands and that detention period will last until 20 October 2020. It is expected that the Court of Justice will not have answered the question referred for a preliminary ruling before that date. When that custodial sentence has been served, the detention of the requested person under the Overleveringswet will continue pending the decision of the Rechtbank on the surrender request. The Rechtbank cannot take that decision until the Court of Justice has answered the question referred for a preliminary ruling. Due to the fact that the Rechtbank cannot anticipate that answer, that there is a very high risk of flight that cannot be reduced to acceptable proportions by setting conditions, and that the requested person has been convicted in Poland of serious criminal offences, the possible suspension of the detention pending surrender while awaiting the answer of the Court of Justice to the question referred for a preliminary ruling does not make sense. Therefore, the Court of Justice's prompt answer to the question referred for a preliminary ruling will have a direct and decisive influence on the duration of the detention of the requested person pending surrender.

### **4. Conclusion**

The hearing must be reopened in order to refer the question to the Court of Justice of the European Union for a preliminary ruling.

### **5. Decision**

**[The Rechtbank] REOPENS and SUSPENDS** the hearing indefinitely pending the judgment of the Court of Justice of the European Union; **[Or. 5]**

**REQUESTS** the Court of Justice of the European Union to answer the following question:

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

[...] [procedural decisions] **[Or. 6]**

[...] [signature] [...]

WORKING DOCUMENT