



Press and Information

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Advocate General's Opinion in Joined Cases
C-354/20 PPU and C-412/20 PPU
Openbaar Ministerie (Independence of the issuing judicial authority)

AG Campos Sánchez-Bordona: the worsening of the generalised deficiencies affecting judicial independence in Poland do not justify the automatic non-execution of every European Arrest Warrant issued by that Member State

The Framework Decision on the European Arrest Warrant¹ ('the Framework Decision') envisages a series of situations in which the execution of a European Arrest Warrant ('EAW') may be refused. However, according to the case-law of the Court of Justice, the execution of an EAW may also be suspended where there is evidence that, if the requested person is surrendered, there is a real risk that that person's fundamental rights will be breached.

In its judgment in *Minister for Justice and Equality*,² delivered against the background of the reforms of the Polish judicial system, the Court of Justice declared that the fundamental rights in question included the right to a fair trial, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').³ According to that judgment, the executing judicial authority must examine, in the first place, whether there is a real risk that that right would be breached as a result of systemic or generalised deficiencies affecting the independence of the judicial bodies of the Member State issuing the EAW. In the second place, it is also necessary to examine, specifically and precisely, whether there are substantial grounds for believing that, if the requested person is surrendered, his or her right to a fair trial may be breached. Accordingly, although the deficiencies which existed at that time were severe, the Court of Justice ruled out the possibility that the executing judicial authority could automatically and indiscriminately refuse to execute any EAW issued by Polish courts.

The officier van justitie (public prosecutor, Netherlands) requested the rechtbank Amsterdam (District Court, Amsterdam, Netherlands) to execute two EAWs issued by different Polish courts for the surrender of two persons. The first EAW was issued for the purposes of a criminal investigation, while the second was issued for the purposes of executing a custodial sentence.

The rechtbank Amsterdam explains that, following the judgment in *Minister for Justice and Equality*, it considered that in Poland there was a real risk that the right to a fair trial would be breached, due to the systemic or generalised deficiencies affecting the independence of the judiciary of that Member State. It therefore examined EAWs issued by Polish judicial bodies from the twofold perspective set out in that judgment. In view of the subsequent worsening of those deficiencies in the administration of justice in Poland, the rechtbank Amsterdam sought a preliminary ruling from the Court of Justice, asking whether, in the current circumstances, it is entitled to refuse the surrender requested by a Polish court, without having to examine in detail the specific circumstances of each EAW. In its view, the legal reforms adopted in Poland in recent

¹ Council Framework Decision 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).

² Judgment of 25 July 2018, *Minister for Justice and Equality* (C-216/18 PPU; see Press Release [No 113/18](#)).

³ The other case of breach of a fundamental right on which the Court of Justice has already ruled is the risk that the requested person will be subject to inhuman or degrading treatment, within the meaning of Article 4 of the Charter (Judgment of 5 April 2016, *Aranyosi and Căldăraru*, Joined Cases [C-404/15 and C-659/15 PPU](#), see Press Release [No 36/16](#)).

months are such that no accused person appearing before the courts of that Member State is guaranteed the right to an independent tribunal. Consequently, the possibility arises of refusing to execute an EAW without examining specifically whether the systemic deficiencies have negative consequences for the *particular* courts which must try the requested person and whether the requested person, on account of his or her personal situation, faces a real risk that his or her right to a fair trial will be breached.

In his Opinion delivered today in those cases, **Advocate General Manuel Campos Sánchez-Bordona** notes that **judicial cooperation in criminal matters is founded upon the principles of mutual recognition and mutual trust** between Member States, and that **the refusal to execute an EAW is an *exceptional response* that must correspond to exceptional circumstances** which, on account of their seriousness, necessitate the limitation of those principles. Those 'exceptional circumstances' indeed include the real risk of infringement of the requested person's right to a fair trial, as a result of 'systemic or generalised deficiencies' in the issuing Member State in relation to the independence of its courts. However, the Advocate General considers that **that *exceptional response* has its limits, and does not go so far as to require the automatic non-execution of every EAW issued by the judicial authority of the Member State affected by those systemic or generalised deficiencies.**

The Advocate General emphasises that the refusal to execute an EAW on grounds other than those envisaged in the Framework Decision requires the rigorous two-stage examination set out in the judgment in *Minister for Justice and Equality*. In his view, **a refusal to execute every EAW issued by a Member State, omitting the second part of that two-stage examination, would in all likelihood result in numerous criminal offences going unpunished, and could undermine the rights of victims.** Moreover, it could be construed as discrediting the professional work of *all* judges in the Republic of Poland who strive to use the judicial cooperation mechanisms laid down in the Framework Decision.

The Advocate General notes that **even though the threat to the independence of Polish courts may have worsened, it is not possible simply to suspend, automatically and indiscriminately, the application of the Framework Decision in respect of any EAWs issued by those courts.** An automatic refusal to execute any of those EAWs would simply amount to the disapplication of the Framework Decision. The Advocate General points out that, as the Court of Justice stated in its judgment in *Minister for Justice and Equality*, **that is possible only where the European Council declares a serious and persistent breach by the issuing Member State of the values of the rule of law, referred to in Article 2 TEU, on which the European Union is based.** The latter situation is no longer a matter of the incorrect operation of a system for guaranteeing rights, but rather concerns the actual disappearance of the conditions under which a legal system is able to protect the principles of the rule of law.

In the Advocate General's view, **the systemic or generalised deficiencies which may be identified in relation to the independence of Polish courts do not deprive those courts of their nature as courts.** They continue to be courts, even though the independence of the judiciary is threatened. **In the face of increased systemic or generalised deficiencies, and in the absence of a formal determination by the European Council, the rechtbank Amsterdam must be even more rigorous in examining the circumstances of the EAW that it has been requested to execute, but it is not exempt from the duty to carry out that examination in particular.** The Advocate General notes, in that respect, that the rechtbank Amsterdam does not appear to have found any reason to refuse to execute the EAWs in these proceedings on any of the grounds referred to in the Framework Decision. Furthermore, in the light of the requested persons' personal circumstances, the nature of the offences for which they are being prosecuted and the context that forms the basis of the EAWs, the rechtbank Amsterdam rules out the risk of improper interference in their prosecution.

Lastly, **the Advocate General considers that it is irrelevant whether the worsening of the systemic or generalised deficiencies affecting the independence of the issuing Member State's courts occurred before or after the EAW was issued.** The overriding consideration is whether the issuing judicial authority (which has to rule on the requested person's fate following his

or her surrender) retains its independence to give judgment on that person's situation free from external interference, threats or pressure. Obviously, the risk of infringement of the fundamental right to a fair trial is diminished if the EAW is issued for the purposes of executing a custodial sentence which was imposed on the requested person at a time when the independence of the sentencing criminal court was not in doubt.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the Opinion in joined cases [C-354/20 PPU](#) and [C-412/20 PPU](#) is published on the CURIA website on the day of delivery.

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