



The existence of evidence of systemic or generalised deficiencies concerning judicial independence in Poland or of an increase in those deficiencies does not in itself justify the judicial authorities of the other Member States refusing to execute any European arrest warrant issued by a Polish judicial authority

However, the execution of a European arrest warrant issued by a Polish judicial authority must be refused if, having regard to the individual situation of the person concerned, the nature of the offence in question and the factual context in which that European arrest warrant has been issued, there are substantial grounds for believing that, on account of those deficiencies, that person will run a real risk of breach of his or her right to a fair trial once he or she is surrendered to those authorities

In August 2015 and February 2019, European arrest warrants ('EAWs') were issued by Polish courts against two Polish nationals for the purposes of conducting a criminal prosecution and executing a custodial sentence. Since the persons concerned are in the Netherlands, the officier van justitie (representative of the public prosecution service, Netherlands) referred the requests for execution of those EAWs to the rechtbank Amsterdam (District Court, Amsterdam, Netherlands).

However, that court has doubts as to whether it should accede to those requests. More specifically, it raises the question of the implications of the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)*,¹ which was delivered against the backdrop of the reforms of the Polish judicial system. In that judgment, the Court held that, by way of exception, the execution of an EAW may be refused if it is established that the person concerned might, if he or she is surrendered to the Member State which issued the EAW, sustain a breach of his or her right to an independent tribunal, which is an essential component of the right to a fair trial.² Nevertheless, such a refusal is possible only following a two-step examination: having assessed in a general manner whether there is objective evidence of a risk of breach of that right, on account of systemic or generalised deficiencies concerning the independence of the issuing Member State's judiciary, the executing judicial authority must then determine to what extent such deficiencies are liable to have an actual impact on the situation of the person concerned if he or she is surrendered to the judicial authorities of that Member State.

On account of recent developments,³ some of which have occurred after the EAW in question was issued, the rechtbank Amsterdam considers that the deficiencies in the Polish system of justice are such that the independence of all Polish courts and, consequently, the right of all individuals in Poland to an independent tribunal are no longer ensured. In that context, the rechtbank is

¹ Judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, [C-216/18 PPU](#); see also [Press Release No 113/18](#).

² That right is guaranteed in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.

³ Alongside other factors, the referring court mentions in particular the Court's recent case-law in this area (judgments of 19 November 2019, *A.K. (Independence of the Disciplinary Chamber of the Supreme Court)*, [Joined Cases C-585/18, C-624/18 and C-625/18](#); see also [Press Release No 145/19](#), and of 26 March 2020, *Miasto Łowicz and Prokurator Generalny (Disciplinary regime concerning judges)*, [Joined Cases C-558/18 and C-563/18](#); see also [Press Release No 35/20](#), and the action for failure to fulfil obligations brought by the Commission against Poland (pending case [C-791/19](#)).

uncertain whether that finding is sufficient in itself to justify a refusal to execute an EAW issued by a Polish court, without there being any need to examine the impact of those deficiencies in the particular circumstances of the case.

In the context of the urgent preliminary ruling procedure (PPU), the Court, sitting as the Grand Chamber, answers that point in the negative, thus confirming its case-law established in the judgment in *Minister for Justice and Equality (Deficiencies in the legal system)*.

The Court's findings

In the first place, the Court holds that systemic or generalised deficiencies affecting the independence of the issuing Member State's judiciary, however serious, are not sufficient on their own to enable an executing judicial authority to consider that all the courts of that Member State fail to fall within the concept of an 'issuing judicial authority' of an EAW,⁴ a concept which implies, in principle, that the authority concerned acts independently.

In that regard, first, the Court observes that such deficiencies do not necessarily affect every decision that those courts may be led to adopt. The Court goes on to state that, although limitations may in exceptional circumstances be placed on the principles of mutual trust and mutual recognition which underpin the operation of the EAW mechanism, denial of the status of 'issuing judicial authority' to all the courts of the Member State concerned by those deficiencies would lead to a general exclusion of the application of those principles in connection with the EAWs issued by those courts. Moreover, such an approach would have other very significant consequences since it would imply, inter alia, that the courts of that Member State would no longer be able to submit references to the Court for preliminary rulings.⁵ Lastly, the Court states that its recent case-law according to which the public prosecutors' offices of certain Member States fail, in the light of their subordinate relationship to the executive, to provide sufficient guarantees of independence to be regarded as 'issuing judicial authorities'⁶ cannot be transposed to Member States' courts. In a Union based on the rule of law, the requirement that courts be independent precludes by its very nature any relationship of that type with the executive.

In the second place, the Court states that the existence of or an increase in systemic or generalised deficiencies concerning the independence of the issuing Member State's judiciary, which are indicative of a risk of breach of the right to a fair trial, does not however permit the presumption⁷ that the person in respect of whom an EAW has been issued will actually run such a risk if he or she is surrendered. Thus, the Court maintains the requirement of a two-step examination set out in the judgment in *Minister for Justice and Equality (Deficiencies in the legal system)* and states that the finding of such deficiencies must indeed prompt the executing judicial authority to exercise vigilance but cannot dispense it from conducting, in accordance with the second step of that examination, a specific and precise assessment of the risk in question. That assessment must take account of the situation of the requested person, the nature of the offence in question and the factual context which forms the basis of the EAW, such as statements by public authorities which are liable to interfere with the way in which the individual case is handled. The Court points out in that regard that a general suspension of the EAW mechanism with regard to a Member State, which would make it permissible to refrain from carrying out such an assessment and to automatically refuse to execute EAWs issued by that Member State, is possible only if the

⁴ Within the meaning of Article 6(1) of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States – Statements made by certain Member States on the adoption of the Framework Decision (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).

⁵ That approach would mean that no court of the issuing Member State would any longer be considered to satisfy the requirement of independence inherent in the concept of 'court or tribunal' within the meaning of Article 267 TFEU.

⁶ See, in particular, the judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, [Joined Cases C-508/18 and C-82/19 PPU](#); see also [Press Release No 68/19](#).

⁷ Under Article 1(3) of the Framework Decision on the EAW.

European Council formally declares that the Member State has failed to respect the principles on which the Union is based.⁸

Furthermore, the Court specifies that, where the EAW has been issued for the purposes of criminal proceedings, the executing judicial authority must, where appropriate, take account of systemic or generalised deficiencies concerning the independence of the issuing Member State's judiciary which may have arisen after the EAW concerned was issued and assess to what extent those deficiencies are liable to have an impact at the level of that Member State's courts with jurisdiction over the proceedings to which the person concerned will be subject. Where an EAW is issued with a view to the surrender of a requested person for the execution of a custodial sentence or a detention order, the executing judicial authority must examine to what extent the systemic or generalised deficiencies which existed in the issuing Member State at the time of issue of the European arrest warrant have, in the particular circumstances of the case, affected the independence of the court of that Member State which imposed the custodial sentence or detention order the execution of which is the subject of that EAW.

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 judgment is published on the CURIA website on the day of delivery.

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⁸ That procedure is provided for in Article 7(2) TEU.