



**A judicial authority called upon to execute a European arrest warrant must refrain from giving effect to it if it considers that there is a real risk that the individual concerned would suffer a breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial on account of deficiencies liable to affect the independence of the judiciary in the issuing Member State**

LM, a Polish national, is the subject of three European arrest warrants issued by Polish courts for the purpose of prosecuting him for trafficking in narcotic drugs. After being arrested in Ireland on 5 May 2017 he did not consent to his surrender to the Polish authorities, on the ground that, on account of the reforms of the Polish system of justice, he runs a real risk of not receiving a fair trial in Poland.

The Court of Justice held in its judgment in *Aranyosi and Căldăraru*<sup>1</sup> that, where the executing judicial authority finds that there exists, for the individual who is the subject of a European arrest warrant, a real risk of inhuman or degrading treatment within the meaning of the Charter of Fundamental Rights of the European Union, the execution of that warrant must be postponed. However, such postponement is possible only after a two-stage examination. First, the executing judicial authority must find that there is a real risk of inhuman or degrading treatment in the issuing Member State on account, *inter alia*, of systemic deficiencies. Second, that authority must ascertain that there are substantial grounds for believing that the individual concerned by the European arrest warrant will be exposed to such a risk. The existence of systemic deficiencies does not necessarily imply that, in a specific case, the individual concerned will be subject to inhuman or degrading treatment in the event that he is surrendered.

In the present case, the High Court (Ireland) has asked the Court of Justice whether the executing judicial authority, when dealing with an application for surrender liable to lead to a breach of the requested person's fundamental right to a fair trial, must, in accordance with the judgment in *Aranyosi and Căldăraru*, find, first, that there is a real risk of breach of that fundamental right on account of deficiencies in the Polish system of justice and, second, that the person concerned is exposed to such a risk, or whether it is sufficient for it to find that there are deficiencies in the Polish system of justice, without having to assess whether the individual concerned is actually exposed to them. The High Court has also asked the Court of Justice what information and guarantees it must, as the case may be, obtain from the issuing judicial authority in order to discount that risk.

Those questions fall within the context of the changes made by the Polish Government to the system of justice, which led the Commission to adopt, on 20 December 2017, a reasoned proposal inviting the Council to determine, on the basis of Article 7(1) TEU,<sup>2</sup> that there is a clear risk of a serious breach by Poland of the rule of law.<sup>3</sup>

<sup>1</sup> Joined Cases [C-404/15 PPU](#) and [C-659/15 PPU](#), see Press Release No. [36/16](#).

<sup>2</sup> Article 7(1) TEU provides: 'On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of

In today's judgment, the Court observes first of all **that refusal to execute a European arrest warrant is an exception to the principle of mutual recognition underlying the European arrest warrant mechanism and that exception must accordingly be interpreted strictly.**

**The Court then holds that the existence of a real risk that the person in respect of whom a European arrest warrant has been issued will suffer a breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial is capable of permitting the executing judicial authority to refrain, by way of exception, from giving effect to the European arrest warrant.** In this connection, the Court points out that maintaining the independence of judicial authorities is essential in order to ensure the effective judicial protection of individuals, including in the context of the European arrest warrant mechanism.

**It follows that, where the person in respect of whom a European arrest warrant has been issued, pleads, in order to oppose his surrender to the issuing judicial authority, that there are systemic or generalised deficiencies, which, according to him, are liable to affect the independence of the judiciary in the issuing Member State and his fundamental right to a fair trial, the executing judicial authority must, as a first step, assess, on the basis of material that is objective, reliable, specific and properly updated, whether there is a real risk, connected with a lack of independence of the courts of the issuing Member State on account of deficiencies of that kind, of such a right being breached in the issuing Member State.**

**The Court considers that information in a reasoned proposal recently addressed by the Commission to the Council on the basis of Article 7(1) TEU is particularly relevant for the purposes of that assessment.**

Also, the Court points out that the requirement that courts be independent and impartial has two aspects. Thus, it is necessary for the bodies concerned (i) to exercise their functions wholly autonomously, shielded from external interventions or pressure, and (ii) to be impartial, which entails maintaining an equal distance from the parties to the proceedings and their respective interests. According to the Court, those guarantees of independence and impartiality require rules, particularly as regards the composition of courts and the appointment, length of service and grounds for abstention, rejection and dismissal of their members. The requirement of independence also means that the disciplinary regime governing their members must display the necessary guarantees in order to prevent any risk of that regime being used as a system of political control of the content of judicial decisions.

If the executing judicial authority considers, having regard to those requirements of independence and impartiality, that there is, in the issuing Member State, a real risk of breach of the fundamental right to a fair trial, **it must, as a second step, assess specifically and precisely whether, in the particular circumstances of the case, there are substantial grounds for believing that, following his surrender, the requested person will run that risk. That specific assessment is also necessary where, as in the present instance, the issuing Member State has been the subject of a reasoned proposal of the Commission seeking a determination by the Council that there is a clear risk of a serious breach by that Member State of the values referred to in Article 2 TEU<sup>4</sup>** and the executing judicial authority considers that it possesses material showing that there are systemic deficiencies in the light of those values.

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the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2'.

<sup>3</sup> Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law of 20 December 2017, COM(2017) 835 final.

<sup>4</sup> Article 2 TEU provides: 'The EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'.

**In order to determine whether the requested person will run a real risk**, the executing judicial authority must examine to what extent the systemic or generalised deficiencies are liable to have an impact at the level of the courts with jurisdiction over the requested person's case. If that examination shows that those deficiencies are liable to affect the courts concerned, the executing judicial authority must then assess whether, **having regard to his personal situation, as well as to the nature of the offence for which he is being prosecuted and the factual context that form the basis of the European arrest warrant**, there are substantial grounds for believing that the individual concerned will run a real risk of breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial.

Furthermore, **the executing judicial authority must request from the issuing judicial authority any supplementary information that it considers necessary for assessing whether there is such a risk**. In that context, the issuing judicial authority may provide any objective material on any changes to the conditions for protecting the guarantee of judicial independence, material which may rule out the existence of that risk for the individual concerned.

**If, after examining all those matters, the executing judicial authority considers that there is a real risk that the individual concerned will suffer in the issuing Member State a breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial, it must refrain from giving effect to the European arrest warrant relating to him.**

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**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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