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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

16 December 2021 (\*)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – European arrest warrant – Charter of Fundamental Rights of the European Union – Scope – Article 51 – Implementation of EU law – Framework Decision 2002/584/JHA – Jurisdiction of the Court – Reference made before the issue of a European arrest warrant – Admissibility – Principle ne bis in idem – Article 50 – Concepts of ‘acquittal’ and ‘conviction’ – Amnesty in the issuing Member State – Final decision discontinuing a criminal prosecution – Revocation of the amnesty – Setting-aside of the decision discontinuing the criminal prosecution – Resumption of proceedings – Need for a decision taken after a determination of the criminal liability of the person concerned – Directive 2012/13/EU – Right to information in criminal proceedings – Scope – Concept of ‘criminal proceedings’ – Legislative procedure for the adoption of a resolution relating to the revocation of an amnesty – Judicial procedure for review of the compliance of that resolution with the national Constitution)

In Case C-203/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Okresný súd Bratislava III (District Court, Bratislava III, Slovakia), made by decision of 11 May 2020, received at the Court on 11 May 2020, in the criminal proceedings against

**AB,**

**CD,**

**EF,**

**NO,**

**JL,**

**GH,**

**IJ,**

**LM,**

**PR,**

**ST,**

**UV,**

**WZ,**

**BC,**

**DE,**

**FG,**

intervening parties:

**HI,**

**Krajská prokuratúra v Bratislave,**

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer, F. Biltgen, L.S. Rossi (Rapporteur) and N. Wahl, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 May 2021,

after considering the observations submitted on behalf of:

- AB, by M. Mandzák, M. Para, Ľ. Hlbočan and Ľ. Kaščák, advokáti,
- CD, EF, NO and JL, by M. Krajčí and M. Para, advokáti,
- IJ, by M. Totkovič and M. Pohovej, advokáti,
- Krajská prokuratúra v Bratislave, by R. Remeta and V. Pravda, acting as Agents,
- the Slovak Government, by B. Ricziová, acting as Agent,
- the European Commission, by S. Grünheid and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 June 2021,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 4(3) TEU, Article 82 TFEU, Articles 47, 48 and 50 of the Charter of Fundamental Rights of the European Union ('the Charter'), Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), and Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).

2 The request has been made in criminal proceedings brought against AB, CD, EF, NO, JL, GH, IJ, LM, PR, ST, UV, WZ, BC, DE and FG ('the accused persons'), in which the referring court intends to issue a European arrest warrant against one of those persons.

### **Legal context**

#### *European Union law*

##### *Framework Decision 2002/584*

3 Article 17 of Framework Decision 2002/584, headed 'Time limits and procedures for the decision to execute the European arrest warrant', provides in paragraph 1:

'A European arrest warrant shall be dealt with and executed as a matter of urgency.'

##### *Directive 2012/13*

4 Article 1 of Directive 2012/13, headed 'Subject matter', provides:

'This Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.'

5 Article 2 of that directive, headed 'Scope', provides in paragraph 1:

'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.'

#### *Slovak law*

##### *The amended Constitution*

6 As set out in Article 86 of the Ústava Slovenskej republiky (Constitution of the Slovak Republic), as amended by the ústavný zákon č. 71/2017 Z. z. (Constitutional Law No 71/2017) of 30 March 2017 ('the amended Constitution'):

'The Národná rada Slovenskej republiky (National Council of the Slovak Republic) is competent, inter alia, to:

...

(i) rule on the annulment of a decision of the President [of the Slovak Republic] adopted pursuant to 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,

...’

7 Article 129a of that constitution provides:

‘The Ústavný súd Slovenskej republiky [(Constitutional Court of the Slovak Republic)] 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 ...’

8 Article 154f of that constitution states:

‘(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 number 55/1998, to the Decision of the President of the Government of the Slovak Republic of 7 July 1998 decreeing an amnesty, published under number 214/1998, and to the Decision of the President of the Slovak Republic of 12 December 1997 granting pardon to an accused person ...

(2) The 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.’

*The amended law on the Constitutional Court*

9 Article 48(b) in the sixth section of the second title of the third part of the zákon č. 38/1993 Z. z. o organizácii Ústavného súdu Slovenskej republiky, o konaní pred ním a o postavení jeho sudcov (Law No 38/1993 on the organisation, rules of procedure and status of the judges of the Constitutional Court of the Slovak Republic), as amended by zákon č. 72/2017 Z. z. (Law No 72/2017) of 30 March 2017, provides in paragraphs 1 to 3:

‘(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, as shall the President of the Slovak Republic if the proceedings relate to a resolution revoking an individual pardon.’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

10 The accused persons were prosecuted in Slovakia for a series of offences allegedly committed in 1995.

11 On 3 March 1998, the Prime Minister of the Government of the Slovak Republic, who, because the term of office of the President of the Slovak Republic had expired, was exercising the President’s powers at that time, issued an amnesty covering those offences (‘the 1998 amnesty’).

12 By decision of 29 June 2001, the Okresný súd Bratislava III (District Court, Bratislava III, Slovakia) brought those prosecutions to an end on the basis, inter alia, of that amnesty. That decision, which became final, produced, under Slovak law, the same effects as a judgment of acquittal.

13 On 4 April 2017, Constitutional Law No 71/2017 and Law No 72/2017 entered into force.

14 By resolution of 5 April 2017, the National Council of the Slovak Republic revoked the 1998 amnesty on the basis of Article 86(i) of the amended Constitution.

15 By judgment of 31 May 2017, the Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic) found, pursuant to Article 129a of the amended Constitution, that that resolution was compliant with the constitution.

16 In accordance with Article 154f(2) of the amended Constitution, the resolution of 5 April 2017 entails the setting-aside of the decision of 29 June 2001 of the Okresný súd Bratislava III (District Court, Bratislava III), with the result that the criminal prosecutions against the accused persons were resumed.

17 The referring court states that, at the request of the Krajská prokuratúra v Bratislave (Regional Prosecutor’s Office, Bratislava, Slovakia), it issued an international arrest warrant against ST on the ground that that person might be in Mali. It adds that, since it cannot rule out the possibility that ST may be in the territory of one of the Member States, it also intends to issue a European arrest warrant against him.

18 That court is uncertain, however, whether the principle *ne bis in idem* precludes the issue of a European arrest warrant in the case in the main proceedings.

19 In that regard, after stating that, from its point of view, Framework Decision 2002/584 and, consequently, the Charter are applicable in the present case, the referring court explains that it must be satisfied, in particular, before issuing a European arrest warrant, that the protection of the fundamental rights of the person concerned is guaranteed. To that end, it seeks to ascertain, first, whether a final decision concluding criminal proceedings is covered by the principle *ne bis in idem* enshrined in Article 50 of the Charter, in particular where such a decision was taken on the basis of an amnesty and subsequently set aside as a result of a legislative measure revoking that amnesty, without a specific court ruling or judicial procedure.

20 Next, the referring court questions whether a legislative procedure, such as that at issue in the main proceedings, the subject matter of which is the revocation of an amnesty, which has the effect of setting aside an individual final decision discontinuing a criminal prosecution, comes within the scope of Directive 2012/13, which lays down the right of all accused persons to obtain, at each stage of criminal proceedings, information about those proceedings in so far as that information is needed to ensure a fair trial, and the right of access to the file. If so, the referring court observes that both the proceedings before the National Council of the Slovak Republic and those before the Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic) preclude a party involved in one or other of those proceedings from being able to exercise his or her fundamental procedural rights, which is liable to infringe not only the provisions of that directive but also Articles 47 and 50 of the Charter and Article 82 TFEU.

21 Lastly, the referring court questions whether national legislation, such as that at issue in the main proceedings, under which review by a Member State's constitutional court of a legislative provision revoking an amnesty is limited solely to the assessment of its compliance with the national constitution, without any further assessment of its compliance with EU law being possible, is compatible with Article 267 TFEU, with the fundamental rights guaranteed in, inter alia, Articles 47 and 50 of the Charter, and with the principle of sincere cooperation under Article 4(3) TEU. Furthermore, the 'national mechanism' for revoking an amnesty may conflict with the principles of proportionality and effectiveness, which limit the procedural autonomy of the Member States when adopting domestic legal provisions.

22 In those circumstances, the Okresný súd Bratislava III (District Court, Bratislava III) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the [principle] *ne bis in idem* ... preclude the issuance of a European arrest warrant within the meaning of [Framework Decision 2002/584], and taking into account Article 50 of [the Charter], 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 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], 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] and in Article 82 [TFEU]?

(3) Does a provision of national law limiting review by the [Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic)] of the Resolution of the National Council of the Slovak Republic ... which revoked an amnesty or individual pardons and was adopted under Article 86(i) of the [amended Constitution], merely to an assessment of the resolution's constitutionality, without taking into account binding acts adopted by the European Union, in particular [the Charter], the [FEU Treaty] and the [EU Treaty], comply with the principle of sincere cooperation within the meaning of Article 4(3) [TEU], Article 267 [TFEU] and Article 82 [TFEU],

the right to a fair trial, guaranteed in Article 47 of [the Charter], 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]?’

## **Procedure before the Court**

### ***The request that the reference be dealt with under the urgent preliminary ruling procedure***

23 The referring court requested that the present case be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court of Justice, referring to Article 17(1) of Framework Decision 2002/584, pursuant to which ‘a European arrest warrant shall be dealt with and executed as a matter of urgency’.

24 On 3 June 2020, the Court decided, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, that there was no need to grant that request, since the referring court had not provided any information from which the specific reasons why it was urgent to rule on the present case could be ascertained. In particular, the referring court had not referred to the accused persons’ detention or, a fortiori, set out the reasons why the Court’s answers could be decisive for their possible release.

### ***The request for the reopening of the oral procedure***

25 By document lodged at the Court Registry on 22 June 2021, AB requested that the oral part of the procedure be reopened.

26 In support of his request, AB observes that the Advocate General noted, in points 53 and 54 of her Opinion, that there were a number of inconsistencies vitiating the request for a preliminary ruling. In that context, AB seeks to stipulate, as a new fact, that, in its decision of 29 June 2001, the Okresný súd Bratislava III (District Court, Bratislava III) discontinued the criminal prosecutions not because of an amnesty, but on the basis of the national-law principle of *ne bis in idem*.

27 Pursuant to Article 83 of its Rules of Procedure, the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

28 That, however, is not the case here.

29 In his request, AB merely sets out his own interpretation of the facts underlying the case and, in particular, of the decision of 29 June 2001 of the Okresný súd Bratislava III (District Court, Bratislava III).

30 Apart from the fact that such an interpretation does not constitute a new fact for the purposes of Article 83 of the Rules of Procedure, it is settled case-law that, in a reference for a preliminary ruling under Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case in the main proceedings. In that context, the Court is only empowered to rule on the interpretation or validity of EU law in the light of the factual and legal situation as described by the referring court, in order to provide that court with such guidance as will assist it in resolving the

dispute before it (judgments of 27 April 2017, *A-Rosa Flussschiff*, C-620/15, EU:C:2017:309, paragraph 35, and of 14 November 2019, *Dilly's Wellnesshotel*, C-585/17, EU:C:2019:969, paragraph 45 and the case-law cited).

31 Furthermore, in so far as, by his request for the reopening of the oral procedure, AB is seeking to respond to the Advocate General's Opinion, suffice it to note that the content of the Advocate General's Opinion also cannot in itself constitute a new fact, otherwise it would be possible for the parties, by invoking such a fact, to respond to that Opinion. The Advocate General's Opinion cannot be debated by the parties. The Court has thus had occasion to point out that, in accordance with Article 252 TFEU, it is the role of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement in order to assist the Court in the performance of the task assigned to it, which is to ensure that, in the interpretation and application of the Treaties, the law is observed. Pursuant to the fourth paragraph of Article 20 of that statute and Article 82(2) of the Rules of Procedure, the Opinion of the Advocate General brings the oral part of the procedure to an end. The Opinion does not form part of the proceedings between the parties, but rather opens the stage of deliberation by the Court. It is therefore not an opinion addressed to the judges or to the parties which stems from an authority outside the Court, but rather, it is the individual reasoned opinion, expressed in open court, of a Member of the Court of Justice itself (judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 21 and the case-law cited).

32 In the present case, the Court finds, having heard the Advocate General, that the information put forward by AB does not disclose any new fact which is of such a nature as to be a decisive factor for the decision that the Court is called upon to deliver in the present case and that the case must not be decided on the basis of an argument which has not been debated between the parties or interested persons. Moreover, having all the necessary information at the close of the written and oral parts of the procedure, the Court considers that it has sufficient information to give a ruling.

33 Consequently, it is not necessary to order the reopening of the oral part of the procedure.

## **Consideration of the questions referred**

### ***The first question***

34 By its first question, the referring court asks, in essence, whether Article 50 of the Charter must be interpreted as precluding the issue of a European arrest warrant against a person who was subject to a criminal prosecution that was initially discontinued by a final judicial decision adopted on the basis of an amnesty, and resumed following the adoption of a law revoking that amnesty and setting aside that judicial decision.

### ***The jurisdiction of the Court***

35 The Slovak Government challenges the Court's jurisdiction to rule on the first question referred on the ground that, since no provision of EU law is applicable to the case in the main proceedings, the Charter is likewise not applicable. In reality, it is contended, the referring court is seeking to have the national Slovak law on amnesty examined by the Court, something which falls outside the Court's jurisdiction. Moreover, EU law is not applicable *ratione temporis* as all the facts at issue in the main proceedings occurred before the Slovak Republic's accession to the European Union.



36 In that regard, it should be pointed out that the first question submitted refers to Article 50 of the Charter.

37 The Charter's field of application, so far as concerns action of the Member States, is defined in Article 51(1) of the Charter, pursuant to which the provisions of the Charter are addressed to the Member States only when they are implementing EU law.

38 Moreover, Article 51(1) of the Charter confirms the Court's settled case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (judgment of 14 January 2021, *Okrazhna prokuratura – Haskovo and Apelativna prokuratura – Plovdiv*, C-393/19, EU:C:2021:8, paragraph 31 and the case-law cited).

39 Thus, where a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction (judgment of 14 January 2021, *Okrazhna prokuratura – Haskovo and Apelativna prokuratura – Plovdiv*, C-393/19, EU:C:2021:8, paragraph 32 and the case-law cited).

40 In the present case, it is true that, as the European Commission states, the main proceedings concern offences which are not harmonised under EU law and that, moreover, EU law does not govern the adoption and revocation of an amnesty.

41 However, the first question concerns the interpretation, not of the national legislation concerning those offences or that amnesty, but of Article 50 of the Charter in the context of the procedure for issuing a European arrest warrant, which the referring court intends to initiate.

42 Such a procedure comes within the scope of Framework Decision 2002/584 *ratione materiae* and *ratione temporis*, with the result that, since that decision is capable of applying to the procedure for issuing a European arrest warrant which the referring court intends to initiate, the Charter is also capable of applying to that procedure.

43 The Court therefore has jurisdiction to answer the first question referred.

#### *Admissibility*

44 The Slovak Government and the Commission state that the referring court has not yet issued a European arrest warrant and that it is not certain that it will do so, since it has not been established that the person in respect of whom that warrant is to be issued is in the territory of one of the Member States. The Member States, it is argued, are implementing EU law, for the purposes of Article 51(1) of the Charter, only when the issuing judicial authority and the executing judicial authority apply the national provisions adopted to implement Framework Decision 2002/584. Accordingly, only the actual issue of a European arrest warrant can be regarded as an implementation of EU law. Merely intending to issue a European arrest warrant, by contrast, is not sufficient for the criminal proceedings concerned to be regarded as an implementation of EU law resulting in the Charter applying to all issues relating to the lawfulness of those proceedings. Therefore, according to the Commission and the Slovak Government, the first question referred is irrelevant and hypothetical and, accordingly, inadmissible.

45 In that regard, it should be borne in mind that, in the context of the cooperation between the Court of Justice and the national courts under Article 267 TFEU, it is solely for the national court

before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling (see, to that effect, judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 27 and the case-law cited).

46 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 28 and the case-law cited).

47 In the present case, it is clear from the order for reference that the Okresný súd Bratislava III (District Court, Bratislava III) takes the view that the conditions for issuing a European arrest warrant against one of the accused persons are, in principle, satisfied and that it intends to issue such a European arrest warrant since it is possible that that person may be in, or could travel to, another Member State. Furthermore, it is apparent from the material before the Court that the issue by the referring court of a European arrest warrant depends on the answer to be provided by the Court to the first question referred.

48 In those circumstances, to claim that it is for a national court which has doubts as to the lawfulness, in the light of the applicable provisions of EU law, of issuing a European arrest warrant to issue such a warrant in order then to be able to refer a question to the Court for a preliminary ruling would run clearly counter to the purpose of Article 267 TFEU.

49 In accordance with settled case-law, the preliminary-ruling mechanism established by that provision aims to ensure that, in all circumstances, EU law has the same effect in all Member States and thus to avoid divergences in its interpretation which the national courts and tribunals have to apply and tends to ensure that application by making available to national judges a means of eliminating difficulties which may be occasioned by the requirement of giving EU law its full effect within the framework of the judicial systems of the Member States. Thus, national courts and tribunals have the broadest power, or even the obligation, to refer a matter to the Court of Justice if they consider that a case pending before them raises questions involving interpretation of the provisions of EU law or consideration of their validity, necessitating a decision on their part (judgment of 6 October 2021, *Conorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 28 and the case-law cited).

50 That is all the more so in the present case since the European arrest warrant system entails a dual level of protection of procedural rights and fundamental rights which must be enjoyed by the requested person, since, in addition to the judicial protection provided at the first level, at which a national decision, such as a national arrest warrant, is adopted, there is the protection that must be afforded at the second level, at which a European arrest warrant is issued (see, to that effect, judgment of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyon and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraph 59 and the case-law cited).

51 Thus, as regards a measure, such as the issuing of a European arrest warrant, which is capable of impinging on the right to liberty of the person concerned, that protection means that a decision meeting the requirements inherent in effective judicial protection should be adopted, at least, at one of the two levels of that protection (judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and in Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 68).

52 Consequently, by making a request to the Court for a preliminary ruling on interpretation in order to satisfy itself that the issue of a European arrest warrant complies with the obligations arising under EU law, the issuing judicial authority is seeking to comply with the obligations resulting from Framework Decision 2002/584 and, therefore, is implementing EU law, for the purposes of Article 51(1) of the Charter.

53 Furthermore, contrary to what the Commission points out, that fact does not have the consequence of making EU law applicable to the criminal proceedings in which that European arrest warrant may be issued since those criminal proceedings are separate from the procedure for issuing such a warrant, which is the only procedure to which Framework Decision 2002/584, and therefore EU law, applies.

54 It follows that the first question referred is admissible.

#### *Substance*

55 In order to answer the first question, it should be noted that, as is apparent from the very wording of Article 50 of the Charter, which enshrines the principle *ne bis in idem* in EU law, '[n]o 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'.

56 In order to determine whether a judicial decision constitutes a decision finally disposing of the case against a person, it is necessary, inter alia, to be satisfied that that decision was taken after a determination had been made as to the merits of the case (see, by analogy, as regards Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990 (OJ 2000 L 239, p. 19), judgments of 10 March 2005, *Miraglia*, C-469/03, EU:C:2005:156, paragraph 30; of 5 June 2014, *M*, C-398/12, EU:C:2014:1057, paragraph 28; and of 29 June 2016, *Kossowski*, C-486/14, EU:C:2016:483, paragraph 42).

57 That interpretation is confirmed, first, by the wording of Article 50 of the Charter, since, as the Advocate General observed in point 51 of her Opinion, the terms 'convicted' and 'acquitted' referred to in that provision necessarily imply that the accused person's criminal liability has been examined and that a determination in that regard has been made.

58 Secondly, that interpretation is in line with the legitimate objective of preventing impunity for persons who have committed an offence, an objective which falls within the context of the area of freedom, security and justice without internal frontiers in which the free movement of persons is ensured, as provided for in Article 3(2) TEU (see, to that effect, judgments of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 36 and 37; of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 60; and of 12 May 2021, *Bundesrepublik Deutschland (Interpol Red Notice)*, C-505/19, EU:C:2021:376, paragraph 86).

59 In the present case, it is, admittedly, apparent from the order for reference that the decision of 29 June 2001 by which the Okresný súd Bratislava III (District Court, Bratislava III) brought to an end the prosecutions brought against the accused persons has, under national law, the same effects as a decision of acquittal.

60 However, irrespective of the nature and effects of that decision under Slovak law, it would appear from the material before the Court that the sole effect of that decision, which was adopted on the basis of, *inter alia*, the 1998 amnesty, was to discontinue those criminal prosecutions before the Okresný súd Bratislava III (District Court, Bratislava III) or any other Slovak court or tribunal could rule on the accused persons' criminal liability, this, however, being a matter for the referring court to determine.

61 In the light of the foregoing, the answer to the first question is that Article 50 of the Charter must be interpreted as not precluding the issue of a European arrest warrant against a person who was subject to a criminal prosecution that was initially discontinued by a final judicial decision adopted on the basis of an amnesty, and resumed following the adoption of a law revoking that amnesty and setting aside that judicial decision, in the case where that decision was adopted before any determination as to the criminal liability of the person concerned.

### *The second question*

62 According to the Court's settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 26 October 2021, *PL Holdings*, C-109/20, EU:C:2021:875, paragraph 34 and the case-law cited).

63 Thus, in view of the reasons for the request for a preliminary ruling, as summarised in paragraph 20 above, the second question referred must be understood as seeking to determine whether Directive 2012/13 must be interpreted as applying to a legislative procedure relating to the revocation of an amnesty and to a judicial procedure for review of the compliance of that revocation with the national constitution and, if so, whether that directive, read in the light of, *inter alia*, Articles 47 and 50 of the Charter, precludes such procedures.

64 Even reformulated in that way, that question is, according to the Slovak Government and the Commission, inadmissible. Since Directive 2012/13 concerns only criminal proceedings, they argue, it does not apply to proceedings brought by the National Council of the Slovak Republic or by the Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic) under the applicable Slovak law. In particular, proceedings before that court do not relate to the rights and obligations of specific natural or legal persons and are not intended to examine their criminal liability. The sole purpose of those proceedings is to assess the constitutionality of a resolution adopted by the National Council of the Slovak Republic pursuant to Article 86(i) of the amended Constitution.

65 In that regard, it is sufficient to note that the objections thus raised with regard to the admissibility of the second question referred relate, in essence, to the actual scope of EU law, in particular to that of Directive 2012/13, and, therefore, to its interpretation. Such arguments, which thus relate to the substance of the question referred, cannot therefore, by their very nature, lead to the inadmissibility of that question (see, by analogy, judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 33 and the case-law cited).

66 The second question referred, as reformulated in paragraph 63 above, is therefore admissible.

67 In order to answer that question, it should be noted that Directive 2012/13, under Article 1 thereof, lays down rules concerning, first, the right to information of suspects or accused persons relating to their rights in criminal proceedings and to the accusation against them and, secondly, the right to information of persons subject to a European arrest warrant relating to their rights.

68 In addition, under Article 2(1) thereof, that directive applies from the time at which 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, the sentencing and resolution of any appeal.

69 It follows from those provisions that that directive applies to proceedings relating to European arrest warrants and to criminal proceedings in so far as the purpose of the latter proceedings is to determine whether the suspect or accused person has committed a criminal offence.

70 It follows that proceedings the purpose of which is not to determine a person's criminal liability cannot come within the scope of Directive 2012/13.

71 In particular, that directive cannot therefore apply to a legislative procedure relating to the revocation of an amnesty or to a judicial procedure the purpose of which is to review the compliance of that revocation with the national constitution. Irrespective even of their effects on a person's procedural situation, the purpose of such procedures is not to establish whether that person is criminally liable.

72 In the light of the foregoing, the answer to the second question referred is that Directive 2012/13 must be interpreted as not applying to a legislative procedure relating to the revocation of an amnesty or to a judicial procedure the purpose of which is to review the compliance of that revocation with the national constitution.

### ***The third question***

73 By its third question, the referring court asks, in essence, whether Article 4(3) TEU, Articles 82 and 267 TFEU and Articles 47 and 50 of the Charter must be interpreted as precluding legislation of a Member State under which the review by that Member State's constitutional court of a legislative provision revoking an amnesty is limited to an assessment of its compliance with the constitution, without any further assessment of its compliance with EU law.

74 In that regard, it should be noted at the outset that, as the Slovak Government was right to observe and as the Advocate General noted in point 72 of her Opinion, national legislation laying down a legislative procedure for the revocation of an amnesty and a judicial procedure the purpose of which is to review the compliance of that revocation with the constitution is not an implementation of EU law, since such procedures do not come within the scope of EU law.

75 Since EU law is therefore not applicable to such national legislation, the Court, in the light of the considerations set out in paragraphs 37 to 39 above, does not have jurisdiction to answer the third question referred.

## Costs

76 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 50 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding the issue of a European arrest warrant against a person who was subject to a criminal prosecution that was initially discontinued by a final judicial decision adopted on the basis of an amnesty, and resumed following the adoption of a law revoking that amnesty and setting aside that judicial decision, in the case where that decision was adopted before any determination as to the criminal liability of the person concerned.**
2. **Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings must be interpreted as not applying to a legislative procedure for the revocation of an amnesty or to a judicial procedure the purpose of which is to review the compliance of that revocation with the national constitution.**

[Signatures]

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\* Language of the case: Slovak.

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