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Lingua del documento :

ECLI:EU:C:2023:841

Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

9 November 2023 (*)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Recognition of judgments imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in another Member State – Framework Decision 2008/909/JHA – Article 3(4) and Article 8 – Refusal to enforce – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Fundamental right to a fair trial before an independent and impartial tribunal previously established by law – Systemic or generalised deficiencies in the issuing Member State – Two-step examination – Revocation of the suspension of execution attached to a custodial sentence imposed by a Member State – Enforcement of that sentence by another Member State)

In Case C-819/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Aachen (Regional Court, Aachen, Germany), made by decision of 6 December 2021, received at the Court on 22 December 2021, in the proceedings

Staatsanwaltschaft Aachen

other party:

M.D.,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot (Rapporteur), S. Rodin and L.S. Rossi, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Netherlands Government, by M.K. Bulterman and C.S. Schillemans, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by S. Grünheid and K. Herrmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 May 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(4) and Article 8 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24; ‘Framework Decision 2008/909’), read in conjunction with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in proceedings relating to a request for the recognition and enforcement, in Germany, of a judgment of a Polish court imposing a custodial sentence of six months on M.D.

Legal context

3 Recitals 5 and 13 of Framework Decision 2008/909 are worded as follows:

‘(5) Procedural rights in criminal proceedings are a crucial element for ensuring mutual confidence among the Member States in judicial cooperation. Relations between the Member States, which are characterised by special mutual confidence in other Member States’ legal systems, enable recognition by the executing State of decisions taken by the issuing State’s authorities. Therefore, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where citizens of the Union were the subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State. Notwithstanding the need to provide the sentenced person with adequate safeguards, his or her involvement in the proceedings should no longer be dominant by requiring in all cases his or her consent to the forwarding of a judgment to another Member State for the purpose of its recognition and enforcement of the sentence imposed.

...

(13) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on any one of those grounds.'

4 Article 3 of that framework decision, entitled 'Purpose and scope', states:

'1. The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.

2. This Framework Decision shall apply where the sentenced person is in the issuing State or in the executing State.

...

4. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.'

5 Article 4 of Framework Decision 2008/909, entitled 'Criteria for forwarding a judgment and a certificate to another Member State', provides:

'1. Provided that the sentenced person is in the issuing State or in the executing State, and provided that this person has given his or her consent where required under Article 6, a judgment, together with the certificate for which the standard form is given in Annex I, may be forwarded to one of the following Member States:

(a) the Member State of nationality of the sentenced person in which he or she lives; or

(b) the Member State of nationality, to which, while not being the Member State where he or she lives, the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment; or

(c) any Member State other than a Member State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that Member State.

...'

6 Article 8 of that framework decision, entitled 'Recognition of the judgment and enforcement of the sentence', provides:

'1. The competent authority of the executing State shall recognise a judgment which has been forwarded in accordance with Article 4 and following the procedure under Article 5, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.

...’

7 Article 9 of Framework Decision 2008/909, entitled ‘Grounds for non-recognition and non-enforcement’, provides:

‘1. The competent authority of the executing State may refuse to recognise the judgment and enforce the sentence, if:

...

(i) according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time:

– either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial,

and

– was informed that a decision may be handed down if he or she does not appear for the trial;

or

(ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

– expressly stated that he or she does not contest the decision,

– or

– did not request a retrial or appeal within the applicable time frame;

...’

8 Article 17 of that framework decision, entitled ‘Law governing enforcement’, is worded as follows:

‘1. The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide

on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

...’

The main proceedings and the questions referred for a preliminary ruling

9 M.D. is a Polish national, habitually resident in Germany, who was sentenced in Poland to a suspended term of imprisonment of six months by a judgment of 7 August 2018 of the Sąd Rejonowy Szczecin-Prawobrzeże (District Court, Szczecin-Prawobrzeże, Poland). The person concerned did not attend his trial even though, according to the information provided by the Polish courts, the summons to the hearing was sent to him at the address in Poland which he had indicated during the investigative procedure.

10 By an order of 16 July 2019, the same court revoked the suspension initially granted and ordered that the custodial sentence imposed on M.D. be enforced. The reasons for that revocation and, in particular, the question whether it followed a new criminal conviction are not evident from the file submitted to the Court.

11 On 13 August 2020, the Sąd Okręgowy w Szczecinie (Regional Court, Szczecin, Poland) issued a European arrest warrant, on the basis of which M.D. was arrested in Germany. By decision of 17 December 2020, the Staatsanwaltschaft Köln (Public Prosecutor’s Office, Cologne, Germany) refused to execute that arrest warrant on the basis of point 6 of Article 4 of 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), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) (‘Framework Decision 2002/584’), on the ground that the person concerned had been habitually resident in Germany for a number of years and that he had objected to his surrender to the Polish authorities.

12 On 26 January 2021, the Sąd Okręgowy w Szczecinie (Regional Court, Szczecin) forwarded to the Generalstaatsanwaltschaft Berlin (General Prosecutor’s Office, Berlin, Germany) an authenticated copy of the judgment of 7 August 2018, together with the certificate referred to in Article 4 of Framework Decision 2008/909, for the purpose of the enforcement in Germany of the custodial sentence imposed on M.D. The file was forwarded to the Staatsanwaltschaft Aachen (Public Prosecutor’s Office, Aachen, Germany), which had territorial competence.

13 By decision of 2 November 2021, having heard M.D., who stated that he had not received any summons to the hearing which was held in Poland and maintained that the allegations made against him were unfounded, the Public Prosecutor’s Office, Aachen, requested that the chamber responsible for enforcement of sentences of the Landgericht Aachen (Regional Court, Aachen, Germany), which is the referring court, grant the request for recognition and enforcement of the judgment of 7 August 2018 and of the order of 16 July 2019 of the Sąd Rejonowy Szczecin-Prawobrzeże (District Court, Szczecin-Prawobrzeże) and impose a custodial sentence of six months on M.D. According to the Public Prosecutor’s Office, Aachen, all the conditions required for the enforcement of the judgment delivered in Poland were satisfied. In particular, it stated that the acts which gave rise to the conviction, committed between March and June 2009, were punishable under German criminal law as unlawful appropriation and forgery.

14 The referring court is unsure whether it may refuse to declare the custodial sentence imposed on M.D. in Poland to be enforceable in Germany, on account of the breach by Poland of the second paragraph of Article 47 of the Charter and of Article 2 TEU. It notes that the evidence at its disposal

indicates systemic or generalised deficiencies in the Polish judicial system on the dates of the judgment and order of the Sąd Rejonowy Szczecin-Prawobrzeże (District Court, Szczecin-Prawobrzeże) in respect of which enforcement is requested, namely 7 August 2018 and 16 July 2019. In that regard, it refers to, inter alia, the reasoned proposal of the European Commission of 20 December 2017 submitted on the basis of Article 7(1) TEU regarding the rule of law in Poland (COM(2017) 835 final), and to the recent case-law of the Court on that matter.

15 In that context, the Landgericht Aachen (Regional Court, Aachen) is unsure whether, for the purpose of the recognition and enforcement in Germany of the custodial sentence imposed on M.D. in Poland, it is for that court to make its own determination as to whether the judicial system of that Member State was deficient on the dates of 7 August 2018 and 16 July 2019 and whether the fundamental right of the person concerned to a fair trial was infringed, or whether it is for the Court of Justice to do so, in order to avoid divergences between the Member States of the European Union. With regard to the substance, the referring court considers that it is not clear that the approach adopted by the Court in its judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586), in relation to Framework Decision 2002/584 can be applied to Framework Decision 2008/909 given that, in the latter framework decision, there is no equivalent to recital 10 of Framework Decision 2002/584, and in the light of the approach adopted by the Court in its judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices, Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456).

16 The Landgericht Aachen (Regional Court, Aachen) is also unsure regarding what approach should be taken where, on the date of the decision or decisions in respect of which enforcement is requested, the state of the rule of law in the issuing Member State was satisfactory, but where it subsequently underwent adverse developments, with the result that it is no longer satisfactory at the time when the court of the executing State has to rule on the recognition and enforcement of the judgment by which the sentence was imposed.

17 In those circumstances, the Landgericht Aachen (Regional Court, Aachen) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Can a court of the executing Member State which has been called upon to rule on a declaration of enforceability refuse, on the basis of Article 3(4) of ... Framework Decision [2008/909], in conjunction with the second paragraph of Article 47 of the [Charter], to recognise the judgment of another Member State and to enforce the sentence imposed by that judgment[,] in accordance with Article 8 of [that framework decision,] where there are reasons to believe that the conditions prevailing in that Member State at the time of the adoption of the decision to be enforced or of the related subsequent decisions are incompatible with the fundamental right to a fair trial because, in that Member State, the judicial system itself is no longer in conformity with the principle of the rule of law enshrined in Article 2 TEU?’

(2) Can a court of the executing Member State which has been called upon to rule on a declaration of enforceability refuse, on the basis of Article 3(4) of ... Framework Decision [2008/909], in conjunction with the principle of the rule of law enshrined in Article 2 TEU, to recognise the judgment of another Member State and to enforce the sentence imposed by that judgment[,] in accordance with Article 8 of [that framework decision,] where there are reasons to believe that the judicial system in that Member State is no longer in conformity with the [abovementioned] principle ... at the time of the ruling on the declaration of enforceability?’

(3) If Question 1 is answered in the affirmative:

Before the recognition of a judgment of a court of another Member State and the enforcement of the sentence imposed by that judgment is refused by reference to Article 3(4) of ... Framework Decision 2008/909 ..., in conjunction with the second paragraph of Article 47 of the Charter ..., on the ground that there are reasons to believe that the conditions prevailing in that Member State are incompatible with the fundamental right to a fair trial because, in that Member State, the judicial system itself is no longer in conformity with the principle of the rule of law, is it necessary to review, in a second step, whether the prevailing conditions which are incompatible with the fundamental right to a fair trial had a detrimental effect specifically on the sentenced person(s) in the proceedings in question?

(4) If Question 1 and/or Question 2 is/are answered in the negative to the effect that the decision as to whether the conditions prevailing in a Member State are incompatible with the fundamental right to a fair trial because, in that Member State, the judicial system itself is no longer in conformity with the principle of the rule of law is a matter not for the courts of the Member States but for the Court of Justice of the European Union:

Was the judicial system in the Republic of Poland in conformity with the principle of the rule of law under Article 2 TEU on 7 August 2018 and/or 16 July 2019, [or] is it currently in conformity with it?

Consideration of the questions referred

The first, second and third questions

18 By its first, second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3(4) and Article 8 of Framework Decision 2008/909 must be interpreted as meaning that the court of the executing Member State may, on its own initiative, refuse to recognise and enforce a judgment imposing a criminal sentence delivered by a court of another Member State where it has evidence of systemic or generalised deficiencies in that Member State regarding the right to a fair trial and, more broadly, the functioning of the judicial system and respect for the rule of law. If so, the referring court asks which date it must take as the basis for assessing the existence of such systemic or generalised deficiencies and whether it must also satisfy itself that those deficiencies had a tangible influence on the situation of the sentenced person.

19 Like Framework Decision 2002/584, Framework Decision 2008/909 gives concrete expression, in criminal matters, to the principles of mutual trust and mutual recognition which require, particularly with regard to the area of freedom, security and justice, that each Member State, save in exceptional circumstances, consider the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (see, to that effect, judgments of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 26, and of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 40). As recital 5 of Framework Decision 2008/909 states, that framework decision further develops judicial cooperation concerning the recognition and enforcement of criminal judgments where citizens of the European Union were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State, with a view to facilitating their social rehabilitation.

20 For that purpose, Article 8 of Framework Decision 2008/909 provides that the executing authority is, in principle, required to grant the request seeking recognition of a judgment and enforcement of a custodial sentence or measure involving deprivation of liberty handed down in

another Member State, which has been forwarded in accordance with Articles 4 and 5 of the abovementioned framework decision. That authority may, in principle, refuse to give effect to such a request only on the grounds for non-recognition and non-enforcement exhaustively listed in Article 9 of Framework Decision 2008/909.

21 However, the Court has recognised that additional limitations of the principles of mutual recognition and mutual trust can be made in exceptional circumstances (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 82 and the case-law cited).

22 That is the case, under certain conditions, in the field covered by Framework Decision 2002/584, where a person who is the subject of a European arrest warrant is exposed to a real risk of suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his or her surrender to the issuing Member State. In order to reach that conclusion, the Court based itself, first, on Article 1(3) of Framework Decision 2002/584, which provides that that framework decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU, and, second, on the fact that the fundamental right guaranteed by Article 4 of the Charter is absolute (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 83 and 84).

23 The Court has subsequently held that the executing authority may also refrain, by way of exception, from giving effect to a European arrest warrant where the surrender of the requested person is liable to expose that person to a real risk of breach of his or her fundamental right to a fair trial, as laid down in the second paragraph of Article 47 of the Charter, having regard to the cardinal importance of that right for protecting all the rights which individuals derive from EU law and for safeguarding the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law (see, to that effect, judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraphs 48 and 59, and of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraphs 45 and 46).

24 The referring court is unsure whether such an approach may be applied to a case involving a request seeking not the surrender to the issuing authorities of a person who is the subject of a European arrest warrant, on the basis of Framework Decision 2002/584, but the recognition of a judgment and the enforcement in the executing State of a criminal sentence handed down in another Member State, where there is evidence that the conditions prevailing in that latter Member State on the date of the adoption of the decision to be enforced or of related subsequent decisions are incompatible with the fundamental right to a fair trial laid down in the second paragraph of Article 47 of the Charter.

25 In that regard, it should be noted that Article 3(4) of Framework Decision 2008/909 provides that that framework decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU.

26 Furthermore, recital 13 of that framework decision states that the latter ‘respects fundamental rights and observes the principles recognised by Article 6 [TEU] and reflected by the Charter ..., in particular Chapter VI thereof’, which include the right to a fair trial before an independent and impartial tribunal, as laid down in the second paragraph of Article 47 of that charter. That recital states, in particular, that ‘nothing in ... Framework Decision [2008/909] should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the

sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on any one of those grounds'.

27 It follows that, like Framework Decision 2002/584, Framework Decision 2008/909 must be interpreted as meaning that the competent authority of the executing Member State may, in exceptional circumstances, refuse to recognise and enforce a criminal conviction handed down in the issuing Member State where it has evidence of systemic or generalised deficiencies which are liable to affect the independence of the judiciary in that Member State and thereby undermine the essence of the fundamental right of the person concerned to a fair trial.

28 Specifically, in response to the questions raised by the referring court regarding the conditions under which the execution of a request made on the basis of Framework Decision 2008/909 may be refused where there are systemic or generalised breaches of the right to a fair trial in the issuing Member State, it must be stated that the possibility of refusing to recognise a judgment and to enforce a criminal sentence on the basis of Article 3(4) of Framework Decision 2008/909, on account of a risk of breach of the fundamental right to a fair trial, requires the competent authority of the executing Member State to carry out a two-step examination.

29 As a first step, it is for that authority to determine whether there is objective, reliable, specific and duly updated material indicating that there is a real risk of breach, in the issuing Member State, of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter, on account of systemic or generalised deficiencies so far as concerns the independence of that Member State's judiciary (see, by analogy, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 52 and the case-law cited).

30 If that is the case, the competent authority of the executing Member State must, as a second step, determine, specifically and precisely, to what extent the deficiencies identified in the first step may have had an impact on the functioning of the courts of the issuing Member State which have jurisdiction over the proceedings brought against the person concerned and whether, having regard to that person's personal situation, the nature of the offence for which he or she was tried, and the factual context of the sentence in respect of which recognition and enforcement are requested, and, where appropriate, to additional information provided by that Member State pursuant to that framework decision, there are substantial grounds for believing that such a risk has actually materialised in the present case (see, by analogy, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 53 and the case-law cited).

31 In that regard, the fact that, in Framework Decision 2008/909, there is no equivalent to recital 10 of Framework Decision 2002/584, according to which the implementation of the European arrest warrant may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) TEU, determined by the Council of the European Union pursuant to Article 7(1) TEU, which concerns the possibility of suspending, in a general manner, the mechanism of the European arrest warrant with respect to a Member State, cannot call into question the need for the competent authority of the executing Member State to carry out, on a case-by-case basis, the examination described in the previous paragraph.

32 As regards the judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices, Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456), to which the referring court refers, it concerned the question whether public prosecutors' offices came within the concept of an 'issuing

judicial authority', within the meaning of Framework Decision 2002/584, which does not have any direct connection with the question referred in the present case. In any event, it cannot be inferred from that judgment that systemic or generalised deficiencies so far as concerns the independence of the judiciary in the issuing Member State would be sufficient to relieve the executing State of the obligation to recognise judgments and enforce criminal sentences handed down by the courts of the issuing Member State on the basis of Framework Decision 2008/909 (see, by analogy, judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 50).

33 Indeed, it should be recalled that the existence of such systemic or generalised deficiencies does not necessarily affect every decision given by the courts of that Member State in each particular case (see to that effect, by analogy, judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraphs 41 and 42).

34 Allowing the competent authority of the executing Member State to suspend, on its own initiative, the mechanism laid down in Framework Decision 2008/909 by refusing, in principle, to give effect to all the requests seeking recognition of judgments and enforcement of criminal sentences from the Member State concerned by those deficiencies would call into question the principles of mutual trust and mutual recognition which underpin that framework decision (see, by analogy, judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 43).

35 In addition, contrary to what the referring court suggests, it is indeed for that court, rather than for the Court of Justice, to assess whether the evidence adduced by the person concerned reveals a ground justifying a refusal to recognise and enforce the criminal conviction at issue in the main proceedings, it being understood, however, that, in accordance with the case-law of the Court, the possibility of such refusal constitutes an exception which must be interpreted strictly (see, by analogy, order of 12 July 2022, *Minister for Justice and Equality (Tribunal established by law in the issuing Member State – II)*, C-480/21, EU:C:2022:592, paragraph 48 and the case-law cited).

36 It must also be stated, with respect to the date which the competent authority of the executing Member State must take as the basis for carrying out that assessment, that, as regards a request coming under Framework Decision 2008/909 and seeking the recognition and enforcement in one Member State of a criminal conviction handed down in another Member State, the examination of whether there are systemic or generalised deficiencies in the judicial system of the issuing Member State, in particular so far as concerns the independence of the courts, must necessarily be carried out in the light of the situation prevailing in that Member State on the date of that conviction. During that assessment, account may be taken of developments in that situation up until that date. By contrast, there is in principle no need to take account of developments in the abovementioned situation which are subsequent to that date.

37 The objective of that examination is to allow the competent authority of the executing Member State to assess, on the basis of the evidence adduced by the person concerned, whether such systemic or generalised deficiencies may have had a tangible influence on the criminal proceedings which were brought against that person and which resulted in his or her conviction (see, by analogy, order of 12 July 2022, *Minister for Justice and Equality (Tribunal established by law in the issuing Member State – II)*, C-480/21, EU:C:2022:592, paragraph 41).

38 It follows that it is for the referring court to take the date of the conviction as the basis for assessing both the existence of systemic or generalised deficiencies in the issuing Member State and

the tangible influence which those deficiencies may have had on the situation of the sentenced person.

39 By contrast, there is no need to consider whether or not the rule of law is respected in the issuing Member State on the date on which the competent authority of the executing Member State is called upon to rule on the request seeking the recognition of a judgment and the enforcement of a criminal sentence handed down in the issuing Member State, since the very purpose of that procedure is that the person concerned, far from having to be surrendered to the authorities of the issuing Member State, remains in the executing Member State in order to serve his or her sentence there.

40 The same applies to the situation in the issuing Member State on the date on which the suspension was revoked where that revocation was ordered on account of the breach of an objective condition which, as the case may be, was attached to the initial sentence, since such revocation constitutes a mere enforcement measure which modifies neither the nature nor the quantum of the sentence (see, to that effect, judgment of 23 March 2023, *Minister for Justice and Equality (Lifting of the suspension)*, C-514/21 and C-515/21, EU:C:2023:235, paragraph 53 and the case-law cited).

41 However, where the revocation of the suspension is the result of a new criminal conviction, which is a matter for the referring court to ascertain in the case in the main proceedings, it is for the competent authority of the executing Member State to assess the situation existing in the issuing Member State up until the date of the new conviction which resulted in that revocation and, accordingly, enabled the request seeking the recognition and enforcement of the initial sentence (see, by analogy, judgment of 23 March 2023, *Minister for Justice and Equality (Lifting of the suspension)*, C-514/21 and C-515/21, EU:C:2023:235, paragraphs 67 and 68).

42 In the light of all the foregoing considerations, the answer to the first, second and third questions is that Article 3(4) and Article 8 of Framework Decision 2008/909 must be interpreted as meaning that the competent authority of the executing Member State may refuse to recognise and enforce a judgment imposing a criminal sentence delivered by a court of another Member State where it has evidence of systemic or generalised deficiencies in that Member State regarding the right to a fair trial, in particular so far as concerns the independence of the courts, and where there are substantial grounds for believing that those deficiencies may have had a tangible influence on the criminal proceedings brought against the person concerned. It is for the competent authority of the executing Member State to assess the situation existing in the issuing Member State up until the date of the criminal conviction in respect of which recognition and enforcement are requested and, if necessary, up until the date of the new conviction which resulted in the revocation of the suspension initially attached to the sentence in respect of which enforcement is requested.

The fourth question

43 In view of the answer to the first, second and third questions, there is no need to reply to the fourth question.

Costs

44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

Article 3(4) and Article 8 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009,

must be interpreted as meaning that the competent authority of the executing Member State may refuse to recognise and enforce a judgment imposing a criminal sentence delivered by a court of another Member State where it has evidence of systemic or generalised deficiencies in that Member State regarding the right to a fair trial, in particular so far as concerns the independence of the courts, and where there are substantial grounds for believing that those deficiencies may have had a tangible influence on the criminal proceedings brought against the person concerned. It is for the competent authority of the executing Member State to assess the situation existing in the issuing Member State up until the date of the criminal conviction in respect of which recognition and enforcement are requested and, if necessary, up until the date of the new conviction which resulted in the revocation of the suspension initially attached to the sentence in respect of which enforcement is requested.

[Signatures]

* Language of the case: German.