



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

13 January 2021 *

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Surrender procedures between Member States – Article 6(1) and Article 8(1)(c) – European arrest warrant issued on the basis of a national measure putting a person under investigation – Concept of an ‘arrest warrant or any other enforceable judicial decision having the same effect’ – No national arrest warrant – Consequences – Effective judicial protection – Article 47 of the Charter of Fundamental Rights of the European Union)

In Case C-414/20 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 3 September 2020, received at the Court on 4 September 2020, in the criminal proceedings against

MM,

interested party:

Spetsializirana prokuratura,

THE COURT (Third Chamber),

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

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the referring court’s request of 3 September 2020, received at the Court on 4 September 2020, that the reference for a preliminary ruling be dealt with under the urgent procedure, pursuant to Article 107 of the Rules of Procedure of the Court of Justice,

having regard to the decision of 21 September 2020 of the Third Chamber to grant that request,

having regard to the written procedure and further to the hearing on 11 November 2020,

* Language of the case: Bulgarian.

after considering the observations submitted on behalf of:

- MM, by V.T. Bratoevska and T. Gincheva, advokati,
- the Bulgarian Government, by T. Tsingileva and L. Zaharieva, acting as Agents,
- the Spanish Government, by M.J. Ruiz Sánchez, acting as Agent,
- the European Commission, by C. Ladenburger, I. Zaloguín and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 December 2020,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 6(1) and Article 8(1)(c) 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'), and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in the context of criminal proceedings brought against MM in which the validity of the European arrest warrant issued against him is being called into question in support of a request for review of the pre-trial detention measure concerning him.

Legal context

European Union law

- 3 Article 1 of Framework Decision 2002/584, entitled 'Definition of the European arrest warrant and obligation to execute it', provides:
 1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
 2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
 3. 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 [TEU].'

4 Article 6 of that framework decision, entitled ‘Determination of the competent judicial authorities’, provides:

‘1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.’

5 Article 8 of that framework decision, entitled ‘Content and form of the European arrest warrant’, states, in point (c) of paragraph 1 thereof:

‘The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

...

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

...’

6 The Annex to Framework Decision 2002/584 sets out a standard form for European arrest warrants. Section (b) of that form, relating to the ‘decision on which the warrant is based’, refers in point 1 thereof to an ‘arrest warrant or [a] judicial decision having the same effect’.

Bulgarian law

7 Framework Decision 2002/584 was transposed into Bulgarian law by the *Zakon za ekstraditsiata i evropeiskata zapoved za arest* (Law on extradition and the European arrest warrant, DV No 46/05 of 3 June 2005; ‘the ZEEZA’). Article 37 of the ZEEZA sets out the provisions on the issuing of a European arrest warrant in terms that are almost identical to those of Article 8 of that framework decision.

8 Under Article 56(1)(1) of the ZEEZA, the public prosecutor is competent, in the pre-trial stage of the criminal proceedings, to issue a European arrest warrant against the accused person. During that stage of the criminal proceedings, Bulgarian legislation does not provide for the possibility of participation by a court in the issuing of the European arrest warrant or of review by a court of the validity of that arrest warrant, either before or after it is issued.

9 Under Article 200 of the *nakazatelno protsesualen kodeks* (Code of Criminal Procedure; ‘the NPK’), read in conjunction with Article 66 of the ZEEZA, the European arrest warrant is not open to appeal except before the public prosecutor’s office of the higher court.

10 The order to appear, the purpose of which is to bring a person suspected of having committed an offence before the police investigating bodies, is governed by Article 71 of the NPK. An appeal against an order to appear can be made only to the public prosecutor.

- 11 The process of putting under investigation a person who is suspected of having committed an offence is governed, inter alia, by Article 219 of the NPK.
- 12 Article 219(1) of the NPK states that, ‘where there is sufficient evidence of the guilt of a specific person ..., the investigating body shall submit a report to the public prosecutor and shall put the person under investigation by drawing up an order for that purpose’. That order is a document issued by the investigating body under the supervision of the public prosecutor. As can be seen from Article 219(4) to (8) and Article 221 of the NPK, that order is intended to notify the person suspected of having committed an offence that he or she has been put under investigation and to give him or her the possibility to defend himself or herself. That order does not have the legal effect of placing the accused person in detention.
- 13 The investigating body’s order for a person to be put under investigation is not open to appeal before a court. It may not be appealed except before the public prosecutor. Article 200 of the NPK thus provides that ‘the investigating body’s order is open to appeal before the public prosecutor. The public prosecutor’s decision, which is not subject to judicial supervision, is open to appeal before the public prosecutor’s office of the higher court, whose decision is final’.
- 14 The placing in pre-trial detention of a person who is the subject of a criminal prosecution is governed, during the pre-trial stage of the criminal proceedings, by Article 64 of the NPK.
- 15 Under Article 64(1) of the NPK, ‘the pre-trial detention measure shall be adopted during the preliminary proceedings by the competent court of first instance at the request of the public prosecutor’.
- 16 With a view to submitting such a request, the public prosecutor must assess whether the requirements of Article 63(1) of the NPK have been met in order to request that that court impose on the accused person, after he or she has been put under investigation, the strictest measure of pre-trial detention during the preliminary proceedings.
- 17 In accordance with Article 64(2) of the NPK, the public prosecutor may adopt a measure ordering that the accused person be placed in detention for a maximum of 72 hours with a view to enabling that person to be brought before the court which has jurisdiction to adopt a pre-trial detention measure, if appropriate.
- 18 Article 64(3) of the NPK provides that ‘the court shall immediately examine the case ... with the participation of the accused person’.
- 19 Under Article 64(4) of the NPK, the court is the competent authority to examine the request for pre-trial detention and to assess whether that measure should be imposed, to choose to impose a less severe measure, or to refuse generally to impose a restrictive procedural measure in respect of the accused person.
- 20 Under Article 270 of the NPK, which is entitled ‘Decisions on coercive measures and other judicial supervision measures during court proceedings’:
 - ‘1. The question of substituting a coercive measure may be raised at any point in the court proceedings. In the event of a change of circumstances, a new request concerning the coercive measure may be submitted to the court having jurisdiction.

2. The court shall rule by way of order in open court.

...

4. An appeal may be brought against the order referred to in paragraphs 2 and 3 ...'

The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court of Justice

- 21 Criminal proceedings were brought in Bulgaria against 41 persons accused of having participated in a criminal drug-trafficking organisation. Sixteen of those persons, including MM, absconded.
- 22 By order of 8 August 2019, made pursuant to Article 71 of the NPK, the investigating body issued a wanted-persons notice against MM so that he could automatically be brought before the police services. That order, which was issued by a police investigator, was never actually enforced.
- 23 By order of 9 August 2019, the investigating body, with the authorisation of the public prosecutor, put MM under investigation for having participated in a criminal drug-trafficking organisation. Since MM had absconded, that order, which, according to the referring court, did not have the legal effect of placing MM in detention, but was intended solely to notify him of the charges against him, was served only on his court-appointed defence lawyer.
- 24 On 16 January 2020, the public prosecutor issued a European arrest warrant against MM. In the section concerning the 'decision on which the arrest warrant is based', in point 1, headed 'arrest warrant or judicial decision having the same effect', reference is made only to the order of 9 August 2019 putting MM under investigation.
- 25 On 25 March 2020, the case was brought before the referring court in order that it might be examined as to the substance.
- 26 On 16 April 2020, the public prosecutor made a request for the persons who had absconded, including MM, to be placed in pre-trial detention. At a public hearing on 24 April 2020, the referring court rejected that request on the ground that, under national law, it was not possible to order such detention in the absence of the accused person.
- 27 On 5 July 2020, in execution of the European arrest warrant of 16 January 2020, MM was arrested in Spain. On 28 July 2020, he was surrendered to the Bulgarian judicial authorities. On the same day, the public prosecutor submitted a request for MM to be placed in pre-trial detention.
- 28 On 29 July 2020, following a hearing at which MM appeared in person and was heard, the referring court ordered that he be placed in pre-trial detention.
- 29 On 5 August 2020, MM appealed against the decision ordering that he be placed in pre-trial detention, arguing inter alia that the European arrest warrant issued against him was unlawful, and requested that the appeal court refer the matter to the Court of Justice for a preliminary ruling.

- 30 On 14 August 2020, the appeal court upheld the decision ordering that MM be placed in pre-trial detention, without addressing the questions relating to defects capable of vitiating the European arrest warrant and rejecting the request that the matter be referred to the Court of Justice for a preliminary ruling.
- 31 On 27 August 2020, MM lodged a fresh application with the referring court, in accordance with Article 270 of the NPK, seeking a review of the lawfulness of the decision ordering that he be placed in pre-trial detention.
- 32 At a public hearing held on 3 September 2020, MM relied inter alia on the unlawfulness of the European arrest warrant issued against him, arguing that this unlawfulness had not been taken into consideration by the Spanish judicial authority that executed the warrant because he had agreed to be surrendered to the Bulgarian authorities. MM claimed the right to rely on the unlawfulness of that warrant before the referring court and submitted that such unlawfulness vitiated the decision ordering that he be placed in pre-trial detention. MM therefore requested that that decision be set aside.
- 33 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is a national law which provides that the European arrest warrant and the national decision on the basis of which that warrant has been issued are to be adopted only by the public prosecutor, and does not permit [a] court to participate in or to exercise prior or subsequent review, consistent with Article 6(1) of Framework Decision 2002/584?
- (2) Is a European arrest warrant which has been issued on the basis of the order for the requested person to be put under investigation, and that order does not involve his or her detention, consistent with Article 8(1)(c) of Framework Decision 2002/584?
- (3) If the answer is in the negative: if a court is not permitted to participate in the issue or review of the European arrest warrant, and that warrant has been issued on the basis of a national decision which does not provide for the detention of the requested person, [and] that European arrest warrant is in fact executed and the requested person is surrendered, should the requested person be granted an effective remedy in the same criminal proceedings as those during which that European arrest warrant was issued? Should the effective remedy involve placing the requested person in the situation in which he or she would have been if the infringement had not taken place?’
- 34 By letter of 1 December 2020, the referring court informed the Court of Justice that the decision ordering the provisional measure of placing MM in pre-trial detention had been amended on 27 November 2020 and that that provisional measure was now in the form of house arrest.

The urgent procedure

- 35 By document lodged on 4 September 2020, the referring court requested that the present reference for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Rules of Procedure of the Court of Justice.

- 36 In that regard, it must be observed, in the first place, that this reference for a preliminary ruling concerns the interpretation of Framework Decision 2002/584, which falls within the areas covered by Title V of Part Three of the FEU Treaty, which relates to the area of freedom, security and justice. It may therefore be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Court's Rules of Procedure.
- 37 In the second place, as regards the criterion relating to urgency, according to the Court's settled case-law, it is necessary to take into account the fact that the person concerned in the main proceedings is, on the date the request for a preliminary ruling is lodged, deprived of his or her liberty and that his or her continuing detention depends on the outcome of the dispute in the main proceedings (see, to that effect, judgments 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, paragraph 38, and of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 99).
- 38 In the present case, as can be seen from paragraphs 21, 28, 31 and 32 above, MM is suspected in the main proceedings of having participated in a criminal drug-trafficking organisation and a decision to place him in pre-trial detention was taken on 29 July 2020. On 27 August 2020, MM, under Article 270 of the NPK, submitted an application to the referring court seeking to call in question the lawfulness of that decision, relying, in that context, on the unlawfulness of the European arrest warrant issued against him.
- 39 Accordingly, the question of keeping MM in pre-trial detention depended, when the request for a preliminary ruling was lodged, on the decision of the Court of Justice, as its answer to the questions put by the referring court could have an immediate impact on how the decision ordering that he be placed in pre-trial detention will be dealt with. Moreover, the conversion of the coercive measure ordered against MM to one of house arrest does not affect that conclusion, as that measure is also capable of restricting MM's liberty to a considerable degree.
- 40 In those circumstances, the Third Chamber of the Court of Justice decided on 21 September 2020, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to grant the referring court's request for the present reference for a preliminary ruling to be dealt with under the urgent preliminary ruling procedure.

The questions referred

The first question

- 41 By its first question, the referring court asks, in essence, whether Article 6(1) of Framework Decision 2002/584 must be interpreted as meaning that the status of 'issuing judicial authority', within the meaning of that provision, is conditional on there being review by a court of the decision to issue the European arrest warrant and of the national decision upon which that warrant is based.
- 42 In that regard, the referring court states that both the decision to issue the European arrest warrant at issue in the main proceedings and the national measure of putting a person under investigation on the basis of which that warrant was issued must be regarded as having been adopted by the public prosecutor alone. As the applicable national law does not provide for any

judicial remedy in respect of those measures, the referring court is of the opinion that it is necessary for the Court of Justice to give a ruling on the compliance of that law with Article 6(1) of Framework Decision 2002/584.

- 43 By contrast, the referring court does not cast doubt on the classification of the public prosecutor as an ‘issuing judicial authority’, within the meaning of Article 6(1) of Framework Decision 2002/584, in the light of the criteria identified by the Court of Justice in order to be eligible for that classification, that is to say, first, its participation in the administration of criminal justice and, secondly, its independence in the execution of those of its responsibilities which are inherent in the issuing of a European arrest warrant (see, in that regard, judgments 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, paragraphs 51 and 74, and 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 52).
- 44 As the Court has stated, judicial review of the decision taken by an authority other than a court to issue a European arrest warrant is not a condition for classification of that authority as an issuing judicial authority within the meaning of Article 6(1) of Framework Decision 2002/584. That requirement does not fall within the scope of the statutory rules and institutional framework of that authority, but concerns the procedure for issuing such a warrant, which must satisfy the requirement of effective judicial protection (judgment of 24 November 2020, *AZ (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 46 and the case-law cited).
- 45 By contrast, the absence of such judicial review of the decision taken by an authority other than a court to issue a European arrest warrant is relevant for the purpose of providing an answer to the first part of the third question. Accordingly, the Court will, when answering that question, examine the requirements inherent in effective judicial protection where it appears that, under the national law of the issuing Member State, the conditions of issue of the European arrest warrant and of the national decision on the basis of which that warrant was issued cannot be reviewed by a court in that Member State, either before or after the surrender of the requested person.
- 46 Consequently, the answer to the first question is that Article 6(1) of Framework Decision 2002/584 must be interpreted as meaning that the status of ‘issuing judicial authority’, within the meaning of that provision, is not conditional on there being review by a court of the decision to issue the European arrest warrant and of the national decision upon which that warrant is based.

The second question

- 47 By its second question, the referring court asks, in essence, whether Article 8(1)(c) of Framework Decision 2002/584 must be interpreted as meaning that a European arrest warrant must be regarded as being invalid where it is not based on a ‘[national] arrest warrant or any other enforceable judicial decision having the same effect’ for the purposes of that provision.
- 48 As a preliminary point, it should be borne in mind that the principle of mutual recognition on which the European arrest warrant system is based is founded on the mutual confidence between the Member States that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter (judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 33 and the case-law cited).

- 49 The principles of mutual recognition and mutual confidence which form the basis of the European arrest warrant system are founded inter alia on the premiss that the European arrest warrant concerned has been issued in conformity with the minimum requirements necessary for it to be valid, which include the requirement laid down in Article 8(1)(c) of Framework Decision 2002/584. The dual level of judicial protection is, in principle, lacking in a situation where a procedure to issue a European arrest warrant has been applied without a decision, such as a decision to issue a national arrest warrant on which the European arrest warrant is based, having been taken by a national judicial authority, before the issuing of the European arrest warrant (see, to that effect, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 57).
- 50 From that point of view, Framework Decision 2002/584 provides, in particular, in Article 8(1)(c) thereof, that a European arrest warrant must contain information, set out in accordance with the form contained in the Annex to that framework decision, regarding evidence of an ‘enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2’ of that framework decision. That information must be given in section (b) of the form included in that Annex, headed ‘Decision on which the warrant is based’, point 1 of which requires the mention of the ‘arrest warrant or judicial decision having the same effect’.
- 51 It should be borne in mind that, whereas Framework Decision 2002/584 does not provide a precise definition of the concept of an ‘arrest warrant or ... enforceable judicial decision having the same effect’, it is apparent from the Court’s case-law that that concept refers, in the first place, to a national measure that is distinct from the European arrest warrant decision (see, to that effect, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 58).
- 52 As regards, in the second place, what must be understood by the term ‘judicial decision’, it has been held that that term covers all the decisions of the Member State authorities that administer criminal justice, but not the police services (judgment of 10 November 2016, *Özçelik*, C-453/16 PPU, EU:C:2016:860, paragraph 33).
- 53 As regards, in the third place, the nature of the measure referred to in Article 8(1)(c) of Framework Decision 2002/584, as the Advocate General stated, in essence, in points 90 to 93 of his Opinion, in order to fall within the scope of the concept of a ‘[national] arrest warrant or any other enforceable judicial decision having the same effect’ for the purposes of that provision, a national measure serving as the basis for a European arrest warrant must, even if it is not referred to as a ‘national arrest warrant’ in the legislation of the issuing Member State, produce equivalent legal effects, namely the legal effects of an order to search for and arrest the person who is the subject of a criminal prosecution. That concept does not therefore cover all the measures which initiate the opening of criminal proceedings against a person, but only those intended to enable, by a coercive judicial measure, the arrest of that person with a view to his or her appearance before a court for the purpose of conducting the stages of the criminal proceedings.
- 54 In the present case, it is apparent from the information given in the order for reference that the national measure on the basis of which the European arrest warrant concerning MM was issued is the order of 9 August 2019 adopted by the public prosecutor putting him under investigation, the sole purpose of which is to notify the person concerned of the charges against him and to afford him the possibility to defend himself by providing explanations or presenting offers of evidence.

- 55 Furthermore, the referring court explained, in response to a request for clarification made by the Court of Justice, that, apart from the order to appear stemming from the order of 8 August 2019 issued by the police services, no other national arrest warrant has been issued against MM. The referring court states in particular that no order has been made against MM on the basis of Article 64(2) of the NPK.
- 56 In view of those facts and to the extent that they should prove to be correct, which it is for the referring court to determine, it does not appear that the European arrest warrant at issue in the main proceedings has a national arrest warrant or an enforceable judicial decision having the same effect as its legal basis, contrary to the requirement laid down in Article 8(1)(c) of Framework Decision 2002/584, meaning that that European arrest warrant is invalid.
- 57 In the light of all the foregoing considerations, the answer to the second question is that Article 8(1)(c) of Framework Decision 2002/584 must be interpreted as meaning that a European arrest warrant must be regarded as invalid where it is not based on a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of that provision. That concept covers national measures adopted by a judicial authority to search for and arrest a person who is the subject of a criminal prosecution, with a view to bringing that person before a court for the purpose of conducting the stages of the criminal proceedings. It is for the referring court to determine whether a national measure putting a person under investigation, such as that on which the European arrest warrant at issue in the main proceedings is based, produces such legal effects.

The third question

- 58 By its third question, which is in two parts, the referring court asks, in essence, first, where no provision is made in the legislation of the issuing Member State for an action to be brought before a court for the purpose of obtaining review of the conditions under which a European arrest warrant was issued by an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, whether Framework Decision 2002/584, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, must be interpreted as permitting the national court hearing an action seeking to challenge the lawfulness of the continued pre-trial detention of a person who has been surrendered pursuant to a European arrest warrant issued on the basis of a national measure that cannot be regarded as a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of Article 8(1)(c) of that framework decision, and in the context of which a plea in law is raised alleging that that European arrest warrant is invalid in the light of EU law, to find that it has jurisdiction to conduct such a review of validity. Secondly, the referring court asks, in essence, whether Framework Decision 2002/584, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, must be interpreted as requiring the effect of a finding by the national court that the European arrest warrant at issue was issued in breach of Article 8(1)(c) of that framework decision, in so far as it is not based on a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of that provision, to be the release of the person placed in pre-trial detention following his or her surrender by the executing Member State to the issuing Member State.

Whether the referring court has jurisdiction to examine the validity of the European arrest warrant

- 59 By the first part of its third question, the referring court asks whether, when faced with the consequences of executing a European arrest warrant in the context of an action in which it is claimed that MM's pre-trial detention should be lifted, it is for it to provide the effective judicial protection required by Article 47 of the Charter, or whether, on the contrary, it should relinquish the issue relating to the validity of the European arrest warrant by affording MM the opportunity to initiate fresh proceedings with a view to obtaining financial compensation.
- 60 The referring court explains that under Bulgarian criminal procedural law it does not have the ability, when hearing an application seeking to call in question the lawfulness of a measure to place a person in pre-trial detention pursuant to Article 270 of the NPK, to carry out an indirect review of the validity of a national or European arrest warrant, as it does not have jurisdiction to rule on the public prosecutor's decision to issue such a warrant, against which an appeal may be brought only before the public prosecutor's office of the higher court.
- 61 In that regard, as the Court has already held, as regards proceedings relating to a European arrest warrant, observance of the rights of the person whose surrender is requested falls primarily within the responsibility of the issuing Member State, which must be presumed to be complying with EU law, in particular the fundamental rights conferred by that law (judgments of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 50, and of 6 December 2018, *IK (Enforcement of an additional sentence)*, C-551/18 PPU, EU:C:2018:991, paragraph 66).
- 62 It is also apparent from the Court's case-law that 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, which may occur, depending on the circumstances, shortly after the adoption of the national judicial decision (judgments 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 of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, C-625/19 PPU, EU:C:2019:1078, paragraph 38).
- 63 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 (judgments 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 60, and of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, C-625/19 PPU, EU:C:2019:1078, paragraph 39).
- 64 In addition, the second level of protection of the rights of the person concerned requires that the issuing judicial authority review observance of the conditions to be met when issuing a European arrest warrant and examine objectively – taking into account all incriminatory and exculpatory evidence, without being exposed to the risk of being subject to external instructions, in particular from the executive – whether it is proportionate to issue that warrant (judgments 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 61, and of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, C-625/19 PPU, EU:C:2019:1078, paragraph 40).

- 65 Furthermore, it should be borne in mind that, where the law of the issuing Member State confers the competence to issue a European arrest warrant on an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, the decision to issue such an arrest warrant and, inter alia, the proportionality of such a decision must be capable of being the subject, in the Member State, of court proceedings which meet in full the requirements inherent in effective judicial protection (judgment of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, C-625/19 PPU, EU:C:2019:1078, paragraph 41 and the case-law cited).
- 66 Such proceedings against a decision to issue a European arrest warrant for the purposes of a criminal prosecution taken by an authority which, whilst participating in the administration of justice and having the necessary independence from the executive, does not constitute a court serve to ensure that the review by a court of that decision and of the conditions to be met when issuing that warrant and, in particular, the proportionality of such a warrant complies with the requirements inherent in effective judicial protection (judgment of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, C-625/19 PPU, EU:C:2019:1078, paragraph 42).
- 67 Accordingly, it is for the Member States to ensure that their legal orders effectively safeguard the level of judicial protection required by Framework Decision 2002/584, as interpreted by the Court's case-law, by means of remedies which they implement and which may vary from one system to another (judgment of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, C-625/19 PPU, EU:C:2019:1078, paragraph 43).
- 68 In that context, introducing a separate right of appeal against the decision to issue a European arrest warrant taken by a judicial authority other than a court is just one possibility in that regard (judgments 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 65, and of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, C-625/19 PPU, EU:C:2019:1078, paragraph 44).
- 69 Consequently, the inclusion in the national legal system of procedural rules whereby the conditions under which a European arrest warrant was issued and, inter alia, its proportionality, may be subject to review by a court in the issuing Member State before, after, or at the same time as its adoption, meets the requirement of effective judicial protection (see, to that effect, judgments 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, paragraphs 70 and 71, and of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, C-625/19 PPU, EU:C:2019:1078, paragraphs 52 and 53).
- 70 While Framework Decision 2002/584 leaves the national authorities some discretion, in accordance with the procedural autonomy which they enjoy, as to the specific manner of implementation of the objectives it pursues, with respect inter alia to the possibility of providing for a certain type of appeal against decisions relating to a European arrest warrant (see, to that effect, judgment of 30 May 2013, *F*, C-168/13 PPU, EU:C:2013:358, paragraph 52), the fact remains that the Member States must ensure that they do not frustrate the requirements flowing from that framework decision, in particular regarding the judicial protection which underlies it.

- 71 In addition, it should be observed that compliance with the Charter is binding, as is stated in Article 51(1) of the Charter, on the Member States and, consequently, on their courts, when they are implementing EU law, which is the case when the issuing judicial authority and the executing judicial authority are applying the provisions of national law adopted to transpose Framework Decision 2002/584 (judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 34 and the case-law cited). That must also be the case when what is at issue is the effectiveness of the judicial review that must be carried out, directly or indirectly, with regard to decisions relating to the European arrest warrant.
- 72 Accordingly, where the procedural law of the issuing Member State does not provide for a separate legal remedy allowing a court to review the conditions under which the European arrest warrant was issued and its proportionality, whether before, after, or at the same time as its adoption, Framework Decision 2002/584, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, must be interpreted as meaning that a court which is called upon to give a ruling at a stage in the criminal proceedings which follows the surrender of the requested person must be able to carry out an indirect review of the conditions under which that warrant was issued where the validity of that warrant has been challenged before it.
- 73 That is *inter alia* the case in a situation, such as that at issue in the main proceedings, in which, in connection with an application seeking to challenge the lawfulness of a decision to place a person in pre-trial detention, the court at issue is called upon to examine a claim that indirectly calls in question the lawfulness of the procedure whereby the European arrest warrant concerning that person was issued and, in particular, the existence of an ‘arrest warrant or any other enforceable judicial decision having the same effect’ for the purposes of Article 8(1)(c) of Framework Decision 2002/584, inasmuch as that warrant enabled that person to be arrested and made to appear before a court and facilitated the subsequent adoption of a measure involving deprivation of liberty.
- 74 Accordingly, the answer to the first part of the third question is that, where no provision is made in the legislation of the issuing Member State for an action to be brought before a court for the purpose of obtaining review of the conditions under which a European arrest warrant has been issued by an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, Framework Decision 2002/584, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, must be interpreted as permitting the national court hearing an action seeking to challenge the lawfulness of the continued pre-trial detention of a person who has been surrendered pursuant to a European arrest warrant issued on the basis of a national measure that cannot be regarded as a ‘[national] arrest warrant or any other enforceable judicial decision having the same effect’ for the purposes of Article 8(1)(c) of that framework decision, and in the context of which a plea in law is raised alleging that that European arrest warrant is invalid in the light of EU law, to find that it has jurisdiction to conduct such a review of validity.

The effects of a finding that the European arrest warrant is invalid on the pre-trial detention of the accused person

- 75 By the second part of its third question, the referring court asks the Court of Justice whether a finding that the European arrest warrant at issue in the main proceedings is invalid should lead to MM being placed in the situation in which he would have found himself if the breach of EU law had not occurred, which in the present case would mean lifting MM’s pre-trial detention.

- 76 In accordance with Article 1(1) of Framework Decision 2002/584, the aim of the mechanism of the European arrest warrant is to enable the arrest and surrender of a requested person, in the light of the objective pursued by that framework decision, so that the crime committed does not go unpunished and that that person is prosecuted or serves the custodial sentence ordered against him or her (judgment of 6 December 2018, *IK (Enforcement of an additional sentence)*, C-551/18 PPU, EU:C:2018:991, paragraph 39).
- 77 Accordingly, as the Advocate General also pointed out in points 148 and 149 of his Opinion, where the requested person has been arrested and then surrendered to the issuing Member State, the European arrest warrant has, in principle, exhausted its legal effects, with the exception of the effects of the surrender expressly provided for in Chapter 3 of Framework Decision 2002/584, and that, in the light of the limits inherent in the mechanism of the European arrest warrant, that mechanism is not an order for the detention of the requested person in the issuing Member State.
- 78 In the present case, MM’s pre-trial detention is the result of a decision taken on 29 July 2020, following a request made by the public prosecutor.
- 79 Furthermore, in the absence of harmonisation of the conditions under which a pre-trial detention measure may be issued and maintained in respect of a person who is the subject of a criminal prosecution (see, to that effect, judgments of 19 September 2018, *Milev*, C-310/18 PPU, EU:C:2018:732, paragraph 47, and of 28 November 2019, *Spetsializirana prokuratura*, C-653/19 PPU, EU:C:2019:1024, paragraph 28), it is only under the conditions laid down in its national law that the court having jurisdiction may decide to adopt such a measure and, where appropriate, interrupt its execution if it finds that those conditions are no longer satisfied.
- 80 Therefore, neither Framework Decision 2002/584 nor Article 47 of the Charter requires a national court to release a person who is the subject of a pre-trial detention measure if it finds that the European arrest warrant that led to that person’s surrender is invalid.
- 81 Consequently, it is solely for the national court having jurisdiction to determine if a national measure involving deprivation of liberty has been taken in respect of the accused person and if it has been adopted in a manner that is consistent with the national law of the issuing Member State. In addition, it is for that court to determine, in the light of the national law of the issuing Member State, what consequences the absence of a valid national arrest warrant may have on the decision to place and then keep the person who is the subject of a criminal prosecution in pre-trial detention.
- 82 Accordingly, Framework Decision 2002/584, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, must be interpreted as not requiring the effect of a finding by the national court that the European arrest warrant at issue has been issued in breach of Article 8(1)(c) of that framework decision, in so far as it is not based on a ‘[national] arrest warrant or any other enforceable judicial decision having the same effect’ for the purposes of that provision, to be the release of the person placed in pre-trial detention following his or her surrender by the executing Member State to the issuing Member State. It is therefore for the referring court to decide, in accordance with its national law, what consequences the absence of such a national measure, as a legal basis for the European arrest warrant at issue, may have on the decision of whether or not to keep the accused person in pre-trial detention.

83 It follows from all those considerations that the answer to the third question is:

- Where no provision is made in the legislation of the issuing Member State for an action to be brought before a court for the purpose of obtaining review of the conditions under which a European arrest warrant was issued by an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, Framework Decision 2002/584, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, must be interpreted as permitting the national court hearing an action seeking to challenge the lawfulness of the continued pre-trial detention of a person who has been surrendered pursuant to a European arrest warrant issued on the basis of a national measure that cannot be regarded as a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of Article 8(1)(c) of that framework decision, and in the context of which a plea in law is raised alleging that that European arrest warrant is invalid in the light of EU law, to find that it has jurisdiction to conduct such a review of validity.
- Framework Decision 2002/584, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, must be interpreted as not requiring the effect of a finding by the national court that the European arrest warrant at issue has been issued in breach of Article 8(1)(c) of that framework decision, in so far as it is not based on a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of that provision, to be the release of the person placed in pre-trial detention following his or her surrender by the executing Member State to the issuing Member State. It is therefore for the referring court to decide, in accordance with its national law, what consequences the absence of such a national measure, as a legal basis for the European arrest warrant at issue, may have on deciding whether or not to keep the accused person in pre-trial detention.

Costs

84 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 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that the status of 'issuing judicial authority', within the meaning of that provision, is not conditional on there being review by a court of the decision to issue the European arrest warrant and of the national decision upon which that warrant is based.**
- 2. Article 8(1)(c) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that a European arrest warrant must be regarded as invalid where it is not based on a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of that provision. That concept covers national measures adopted by a judicial authority to search for and arrest a person who is the subject of a criminal prosecution, with a view to bringing that**

person before a court for the purpose of conducting the stages of the criminal proceedings. It is for the referring court to determine whether a national measure putting a person under investigation, such as that on which the European arrest warrant at issue in the main proceedings is based, produces such legal effects.

3. Where no provision is made in the legislation of the issuing Member State for an action to be brought before a court for the purpose of obtaining review of the conditions under which a European arrest warrant was issued by an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as permitting the national court hearing an action seeking to challenge the lawfulness of the continued pre-trial detention of a person who has been surrendered pursuant to a European arrest warrant issued on the basis of a national measure that cannot be regarded as a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of Article 8(1)(c) of that framework decision, and in the context of which a plea in law is raised alleging that that European arrest warrant is invalid in the light of EU law, to find that it has jurisdiction to conduct such a review of validity.

Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in the light of the right to effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights, must be interpreted as not requiring the effect of a finding by the national court that the European arrest warrant at issue has been issued in breach of Article 8(1)(c) of that framework decision, in so far as it is not based on a '[national] arrest warrant or any other enforceable judicial decision having the same effect' for the purposes of that provision, to be the release of the person placed in pre-trial detention following his or her surrender by the executing Member State to the issuing Member State. It is therefore for the referring court to decide, in accordance with its national law, what consequences the absence of such a national measure, as a legal basis for the European arrest warrant at issue, may have on deciding whether or not to keep the accused person in pre-trial detention.

[Signatures]