



## Reports of Cases

### JUDGMENT OF THE COURT (Fourth Chamber)

30 June 2022\*

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Charter of Fundamental Rights of the European Union – Articles 6 and 47 – Right to freedom of movement and residence – Right to an effective judicial remedy – Principles of equality and mutual trust – Framework Decision 2002/584/JHA – Directive 2012/13/EU – Right to information in criminal proceedings – Letter of Rights on arrest – Right of a person to be informed of the accusation against him or her in relation to a national arrest warrant – Right of access to the materials of the case – Conditions for issuing a European arrest warrant in respect of an accused person who is in the executing Member State – Primacy of EU law)

In Case C-105/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 22 February 2021, received at the Court on the same day, in the criminal proceedings against

**IR,**

interested party:

**Spetsializirana prokuratura,**

THE COURT (Fourth Chamber),

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

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- IR, by A.O. Mandzhukova-Stoyanova and C. Nedyalkova, адвокати,
- the European Commission, by S. Grünheid and I. Zaloguin, acting as Agents,

\* Language of the case: Bulgarian.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Articles 6 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), of the right to freedom of movement and residence, of the principles of equality, mutual trust and primacy of EU law and 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').
- 2 The request has been made in criminal proceedings brought against IR in respect of offences linked to cigarette trafficking.

### **Legal context**

#### ***International law***

- 3 Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR'), signed in Rome on 4 November 1950, provides:

'1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

...'

## ***EU law***

### *Framework Decision 2002/584*

4 Recital 5 of Framework Decision 2002/584 states:

'... Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. ...'

5 Article 1 of that framework decision 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].'

6 Under Article 6(1) of Framework Decision 2002/584, the issuing judicial authority is to 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.

7 Under the heading 'Content and form of the European arrest warrant', Article 8 of that framework decision provides:

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

- (a) the identity and nationality of the requested person;
- (b) the name, address, telephone and fax numbers and email address of the issuing judicial authority;
- (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;
- (d) the nature and legal classification of the offence, particularly in respect of Article 2;
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
- (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

(g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council [of the European Union] that it will accept a translation in one or more other official languages of the Institutions of the European Communities.'

- 8 Article 17 of Framework Decision 2002/584, entitled 'Time limits and procedures for the decision to execute the European arrest warrant', states in paragraph 1:

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

- 9 The annex to that framework decision sets out a form detailing the information that must be included in a European arrest warrant.

*Directive 2012/13/EU*

- 10 Recital 14 of 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) states that that directive lays down common minimum standards to be applied in the field of information about rights and about the accusation to be given to persons suspected or accused of having committed a criminal offence, with a view to enhancing mutual trust among Member States, and builds on the rights laid down in the Charter, and in particular Articles 6, 47 and 48 thereof, by building upon Articles 5 and 6 ECHR as interpreted by the European Court of Human Rights.

- 11 Article 6 of that directive provides:

'1. Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.

2. Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed.

3. Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

...'

### ***Bulgarian law***

- 12 The zakon za ekstraditsiata i evropeyskata zapoved za arest (Law on extradition and the European arrest warrant) (Darzhaven vestnik (State Gazette (DV)) No 46 of 2005) transposes Framework Decision 2002/584 into national law. Article 37 of that law and the form annexed thereto correspond to Article 8 of the framework decision and the form set out in the annex to that decision.
- 13 Article 55 of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure; ‘the NPK’) and Articles 72 to 74 of the Zakon za Ministerstvoto na vatrešnite raboti (Law on the Ministry of the Interior) provide that a person who is arrested in Bulgaria by the Bulgarian authorities on the basis of a national arrest warrant is to be informed of his or her rights as an arrested person and also of the rights he or she enjoys as an accused person.
- 14 In accordance with Article 59(1) and (2) of the NPK, the act ordering the supervision measure, such as a pre-trial detention measure, is to state the reasons for that measure and is to be provided to the accused person. The national arrest decision must provide information on the possibilities of challenging that decision.
- 15 Neither the second sentence of Article 65(3) of the NPK nor Article 269(3)(4)(b) thereof precludes the use of remedies when the person is arrested in the executing Member State.
- 16 According to Articles 65 and 270 of the NPK, the arrested person is to be informed of the right to challenge an arrest warrant and to familiarise himself or herself with all the materials of the case in the context of that challenge. He or she must be able to have direct contact with his or her lawyer, even if that lawyer is appointed by the court. Moreover, the court is to send to the arrested person, of its own motion, a copy of the indictment, which is to describe in detail the acts which are the subject of the indictment, as well as the order fixing the date of the hearing; that order is to set out in detail the rights of that arrested person in the court proceedings. The arrested person, informed of his or her rights and of the factual and legal circumstances surrounding his or her arrest, can immediately challenge that arrest before the court.

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

- 17 The facts in the main proceedings are identical to those in the case giving rise to the judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)* (C-649/19, EU:C:2021:75).
- 18 The Spetsializirana prokuratura (Specialised Public Prosecutor’s Office, Bulgaria) brought criminal proceedings against IR, who is accused of having participated in a criminal organisation for the purpose of committing tax offences.
- 19 When the trial stage of the criminal proceedings against IR commenced on 24 February 2017, he had left his home address and could not be found.
- 20 By order of 10 April 2017, the referring court adopted a pre-trial detention measure in respect of IR; this measure constituted a national arrest warrant.

- 21 On 25 May 2017, a European arrest warrant was issued in respect of IR, who had still not been found. The lawyer appointed by the court to represent him was replaced by another court-appointed lawyer.
- 22 On 20 August 2019, the referring court annulled the European arrest warrant and, intending to issue a new European arrest warrant in respect of IR and wishing to obtain clarification of the information to be attached to that new warrant, referred questions to the Court for a preliminary ruling in Case C-649/19, *Spetsializirana prokuratura (Letter of rights)*.
- 23 According to the referring court, the judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)* (C-649/19, EU:C:2021:75), while replying to the questions that it raised in its request for a preliminary ruling, did not remove all of its doubts. In addition, further doubts have arisen in the light of the answers given in that judgment.
- 24 Thus, according to the referring court, the questions raised in the present case seek, in essence, to clarify the way in which it must draft the new European arrest warrant – which it intends to issue in respect of IR – as regards the information on the rights of the accused person that it is required to forward to the executing judicial authority, and to determine how it must proceed in the event that that person requests the annulment of the national arrest decision.
- 25 It states that the questions in the present case have been raised in the context of the possibilities available to the requested person of challenging his or her arrest, in particular between the time when that arrest takes place in the Member State executing the European arrest warrant and the time when that person is surrendered to the Member State which issued that warrant.
- 26 The referring court takes the view that it is apparent from the judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)* (C-649/19, EU:C:2021:75), that the provisions of Articles 4, 6 and 7 of Directive 2012/13 do not apply as regards the information to be forwarded to the arrested person before his or her surrender to the issuing Member State. It follows that the issuing judicial authority is under no obligation under that directive to inform that person before such surrender. However, the question arises as to whether the principles on which EU law is based preclude that interpretation.
- 27 Furthermore, according to paragraphs 79 and 80 of the judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)* (C-649/19, EU:C:2021:75), the right to effective judicial protection is respected if the person who is the subject of a European arrest warrant can challenge the arrest decision after his or her surrender to the issuing Member State. Thus, by contrary inference, for the purposes of effective judicial protection, such a remedy is not necessary before that surrender. In those circumstances, the question arises as to whether a national provision which requires that information on the national arrest decision and on the right to challenge that decision be provided to the person concerned, even though that person is not in the issuing Member State, constitutes an infringement of EU law.
- 28 Thus, in the context of the first question, the referring court asks whether Article 6 of the Charter, read in conjunction with Article 5(1)(c) and (2) and (4) ECHR, Article 47 of the Charter, the right to freedom of movement and residence, the principle of equality and the principle of mutual trust preclude the issuing judicial authority, within the meaning of Article 6(1) of Framework Decision 2002/584, from making no effort whatsoever to inform the person arrested on the basis of a

European arrest warrant of the factual and legal reasons for his or her arrest and of the possibilities of challenging that arrest, while that person is in the territory of the executing Member State.

- 29 In that regard, the referring court states, in the first place, that it follows from the case-law of the European Court of Human Rights that that court does not accept the view that the requirement laid down in Article 5(1)(c) ECHR does not apply to the period during which the national arrest decision forms the basis for the issue of the European arrest warrant, but applies only after the surrender of the requested person. Accordingly, it is necessary to ensure the rights of defence of the accused person from the moment of the arrest of that person in the Member State executing the European arrest warrant.
- 30 In the second place, as regards observance of the requirement of an ‘effective remedy’ within the meaning of Article 47 of the Charter, the referring court takes the view that, on the basis of the case-law of the European Court of Human Rights relating to Article 5 ECHR, Article 47 recognises the right of the person who is the subject of a European arrest warrant to be informed of the factual and legal reasons for his or her arrest and of the possibilities of challenging that arrest, even if he or she is arrested in the executing Member State.
- 31 In particular, if, at the time of his or her arrest in the executing Member State, that person successfully challenges that arrest in the issuing Member State, that would result in the annulment of the arrest decision and therefore in the withdrawal of the European arrest warrant and the release by the executing judicial authority of the person concerned. For that reason, the possibility of challenging the national arrest decision where, in execution of that decision, the executing judicial authority has arrested the requested person would indeed be an effective remedy in the procedure relating to European arrest warrants.
- 32 Notwithstanding the case-law resulting from the judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)* (C-649/19, EU:C:2021:75, paragraphs 79 and 80), the referring court raises the question of the effectiveness of a remedy available to a requested person which produces its effects only after the procedure relating to European arrest warrants has been concluded, when the requested person is surrendered in the issuing Member State. The referring court takes the view that it is inconceivable that Framework Decision 2002/584 precludes the notification of the national arrest decision to the requested person. On the contrary, it is precisely in the context of a European arrest warrant for the purposes of criminal prosecution that it is most necessary for the accused person to be informed before his or her surrender.
- 33 Lastly, according to the referring court, in order to achieve effective judicial protection, beyond the two levels at which judicial protection is afforded by the case-law of the Court to the person who is the subject of a European arrest warrant, namely that at which the national arrest decision is adopted and that at which the European arrest warrant is issued, it is necessary to afford that person a third level of protection, namely protection before the issuing authority in the course of the execution of the European arrest warrant while that person is in the executing Member State. Furthermore, observance of the principle of proportionality requires that that same person have an effective remedy against the national arrest decision when he or she is in the executing Member State.
- 34 In the third place, the referring court takes the view that, unlike a purely domestic situation, the fact that the issuing judicial authority makes no effort whatsoever to create the conditions for the person who is the subject of a European arrest warrant to be informed, once that person has been found and possibly arrested in the territory of the executing Member State, of the factual and legal

reasons for his or her arrest directly affects the exercise of the right of freedom of movement and residence provided for in Article 3(2) TEU and in Articles 20 and 21 TFEU, since that authority thus makes it more difficult to exercise that right. In such a situation, there is an unjustified unequal treatment of persons who have exercised such a right.

- 35 In the fourth place, that court takes the view that, in the light of the principle of equality, the legal situation of a person who is the subject of a national arrest decision on the basis of which a European arrest warrant is subsequently issued must be no less favourable when the arrest in question is made in the territory of the executing Member State than when an arrest is made in national territory. The same is true as regards the notification of that decision where it has been adopted in the absence of the accused person.
- 36 In the fifth place, the principle of mutual trust would be compromised in the absence of an adequate opportunity for the person who is the subject of a European arrest warrant to raise his or her objections before the issuing judicial authority where he or she is in the executing Member State. In the absence of such an opportunity, the executing judicial authority would be faced with the dilemma of whether to execute a European arrest warrant issued on the basis of grounds which existed in the past, but in respect of which it is not certain that they still exist, and might thus be required to execute such a warrant without being certain that the fundamental rights of the requested person have actually been observed in the issuing Member State.
- 37 In the context of the second question, the referring court seeks to ascertain whether EU law precludes national legislation which requires that the accused person, whether that person is in national territory or in that of another Member State, be informed, by being served a copy of the national arrest decision, of the factual and legal reasons for his or her arrest and of the possibility of challenging that arrest. It follows from the judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)* (C-649/19, EU:C:2021:75), that a person accused and arrested pursuant to a European arrest warrant does not enjoy the rights, within the meaning of Directive 2012/13, that he or she would enjoy in the event of a purely national arrest, since the EU legislature has taken a deliberate decision not to confer on such a person the rights referred to in Articles 3 and 4 of that directive. It follows that, if national law nevertheless grants him or her such rights even if the arrest takes place in another Member State, that might be contrary to Directive 2012/13. In addition, the question arises as to whether, when it receives a request for the annulment of the arrest from the accused person, who is in the executing Member State, the referring court must refrain from dealing with that request until the surrender of that person, after the execution of the European arrest warrant.
- 38 Lastly, in the event that it follows from the answer to the first question that EU law requires that the person who is the subject of a European arrest warrant be informed of the factual and legal grounds of the national arrest decision and of the possibilities of challenging that decision, or that it follows from the answer to the second question that EU law does not preclude such information, the referring court asks, by its third question, how that information should be provided.

39 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Would it be in conformity with Article 6 of the Charter – read in conjunction with Article 5(4), (2) and (1)(c) ECHR – and with Article 47 of the Charter, the right to freedom of movement and residence, the principle of equality and the principle of mutual trust if the issuing judicial authority, within the meaning of Article 6(1) of Framework Decision 2002/584, were to make no effort whatsoever to inform the requested person, while he or she is in the territory of the executing Member State, of the factual and legal reasons for his or her arrest and of the right to challenge that arrest?
- (2) If so: Does the principle of the primacy of EU law over national law require the issuing judicial authority not to provide that information and, moreover, if the requested person requests the withdrawal of the national arrest warrant despite that failure to provide information, does that principle require the issuing judicial authority to assess that request on the merits only after the requested person has been surrendered?
- (3) What legal measures of EU law are the appropriate basis for such provision of information?’

## **The questions referred**

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

- 40 By its first question, the referring court asks, in essence, whether Articles 6 and 47 of the Charter, the right to freedom of movement and residence and the principles of equality and mutual trust must be interpreted as meaning that the judicial authority issuing a European arrest warrant, adopted under Framework Decision 2002/584, is obliged to forward to the person who is the subject of that arrest warrant the national decision on the arrest of that person and information on the possibilities of challenging that decision where that person is in the Member State executing the European arrest warrant and has not been surrendered to the competent authorities of the Member State issuing that arrest warrant.
- 41 As regards, in the first place, Articles 6 and 47 of the Charter, it should be noted that, as is confirmed in Article 1(3) of Framework Decision 2002/584, that framework decision cannot have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU.
- 42 In that regard, the Court has noted, first, that Article 8(1)(d) and (e) of Framework Decision 2002/584 provides that the European arrest warrant must contain information on the nature and legal classification of the offence and a description of the circumstances in which the offence was committed, including the time, place and degree of participation by the requested person. That information corresponds, in essence, to that referred to in Article 6 of Directive 2012/13 (judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)*, C-649/19, EU:C:2021:75, paragraph 78), which, as is apparent from recital 14 thereof, lays down common minimum standards to be applied in the field of information about rights and about the accusation to be given to persons suspected or accused of having committed a criminal offence,

with a view to enhancing mutual trust among Member States, and builds on the rights laid down in the Charter, and in particular Articles 6 and 47 thereof, by building upon Articles 5 and 6 ECHR as interpreted by the European Court of Human Rights.

- 43 It follows that the person arrested on the basis of a European arrest warrant is to be informed, in the Member State executing that warrant and before his or her surrender to the competent authorities of the issuing Member State, of the reasons for his or her arrest, including the criminal act he or she is suspected or accused of having committed.
- 44 Secondly, the Court has stated that the right to effective judicial protection, within the meaning of Article 47 of the Charter, does not require that the right, provided for in the legislation of the issuing Member State, to challenge the decision to issue a European arrest warrant for the purposes of criminal prosecution can be exercised before the surrender of the person concerned to the competent authorities of that Member State. Thus, the Court has taken the view that the mere fact that the person who is the subject of a European arrest warrant issued for the purposes of criminal prosecution is not informed about the remedies available in the issuing Member State and is not given access to the materials of the case until after he or she is surrendered to the competent authorities of the issuing Member State cannot result in any infringement of the right to effective judicial protection (see, to that effect, judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)*, C-649/19, EU:C:2021:75, paragraphs 79 and 80).
- 45 It is thus apparent from the judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)* (C-649/19, EU:C:2021:75), that Articles 6 and 47 of the Charter do not require that the person who is the subject of a European arrest warrant issued for the purposes of criminal prosecution, within the meaning of Framework Decision 2002/584, be given access, before being surrendered to the competent authorities of the issuing Member State, to the materials of the national case and to information on the remedies available for the purpose of challenging the decision on the European arrest warrant before the issuing judicial authority.
- 46 It should be noted that that interpretation can necessarily be applied to the information on the national arrest decision, which constitutes the national arrest warrant on which the European arrest warrant is based, and on the various remedies available in the issuing Member State against that decision. In such a situation, the rights of the accused person under Articles 6 and 47 of the Charter and, in particular, his or her right to information, relating to his or her rights in criminal proceedings and to the accusation against him or her, are protected since, first, the European arrest warrant incorporates the information provided for in Article 8 of Framework Decision 2002/584 and, secondly, the accused person receives the information on the remedies in the issuing Member State and is given access to the materials of the case, in accordance with Directive 2012/13, as soon as he or she is surrendered to the competent authorities of that State.
- 47 However, the referring court considers that situation to be unsatisfactory and takes the view that the issuing judicial authority should be required to inform the person who is the subject of a European arrest warrant of the national decision on which that warrant is based, and of the remedies available against that decision, before his or her surrender to the issuing Member State. Such an interpretation is, in the referring court's view, consistent with the requirements stemming from the case-law of the European Court of Human Rights relating, in particular, to Article 5(1)(c) and (f) ECHR, read in conjunction with paragraphs 2 and 4 of that article.

- 48 It is necessary, in that regard, to bear in mind that the European arrest warrant system introduced by Framework Decision 2002/584 is based on the principle of mutual recognition, which is itself 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 (judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 77, and of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)*, C-649/19, EU:C:2021:75, paragraph 71).
- 49 In that context, where a European arrest warrant is issued with a view to the arrest and surrender by another Member State of a requested person for the purpose of conducting a criminal prosecution, that person must have already had the benefit, at the first stage of the proceedings, of procedural safeguards and fundamental rights, the protection of which it is the task of the judicial authorities of the issuing Member State to ensure, in accordance with the applicable provisions of national law, for the purpose, inter alia, of adopting a national arrest warrant (judgments of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 55, and of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)*, C-649/19, EU:C:2021:75, paragraph 72).
- 50 The Court has thus already considered that the European arrest warrant system entails a dual level of protection of the fundamental and procedural rights of 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 (judgments of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 56, and of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)*, C-649/19, EU:C:2021:75, paragraph 73).
- 51 Since the issuing of a European arrest warrant is capable of impinging on the right to liberty of the person concerned, enshrined in Article 6 of the Charter, 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 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 68, and of 28 January 2021, *Spetsializirana prokuratura (Letter of Rights)*, C-649/19, EU:C:2021:75, paragraph 74).
- 52 It thus follows from settled case-law that, since such a decision is adopted either at the time of the adoption of the national arrest warrant or at the time of the issue of the European arrest warrant, the protection conferred by Articles 6 and 47 of the Charter in no way requires that a third level of judicial protection be afforded to the requested person, such as that envisaged by the referring court, in which that person would be entitled to receive, even before his or her surrender to the authorities of the issuing Member State, the national arrest decision on which the European arrest warrant is based and information on the possibilities of challenging that decision.
- 53 In the present case, it must be noted that, in the case in the main proceedings, the national arrest warrant was issued by a court, and that the same will be true of the European arrest warrant if, as the case may be, the referring court issues such a warrant. It follows that, at each of the two levels of judicial protection of the requested person, decisions meeting, in principle, the requirements inherent in effective judicial protection will have been adopted.

- 54 Moreover, as regards Article 5(1)(c) and (f) ECHR, mentioned by the referring court, it should be borne in mind that, since the rights provided for in Article 6 of the Charter – according to which everyone has the right to liberty and security of person – correspond to those guaranteed by Article 5 ECHR and have, in accordance with Article 52(3) of the Charter, the same meaning and the same scope, reference should be made to the case-law of the European Court of Human Rights.
- 55 Article 5(1) ECHR provides that everyone has the right to liberty and security of person and that no one shall be deprived of his or her liberty save in the cases specified, inter alia, in paragraph 1(c) and (f). Paragraph 1(c) refers to the case of a person arrested and detained for the purpose of bringing him or her before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his or her committing an offence or fleeing after having done so. Paragraph 1(f) refers to the case of the lawful arrest or detention of a person to prevent his or her effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 56 In that regard, it must be borne in mind from the outset that the European arrest warrant mechanism established by Framework Decision 2002/584 corresponds to the situation referred to in Article 5(1)(f) ECHR (see, to that effect, judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)*, C-649/19, EU:C:2021:75, paragraph 55).
- 57 As stated by the referring court, the European Court of Human Rights has held that, in the context of extradition proceedings, where the national decision on which the extradition request is based is invalid, the requesting State is responsible for the illegal arrest of the person concerned in the requested State. In such a situation, the responsibility borne by the requesting State is a responsibility which arises from Article 5(1)(c) ECHR and not from Article 5(1)(f) of that convention (ECtHR, 2 May 2017, *Vasiliciuc v. the Republic of Moldova*, CE:ECHR:2017:0502JUD001594411, §§ 37 and 38).
- 58 However, it should be noted that the question before the court in the case in the main proceedings is in no way comparable to that of the responsibility of the requesting State or of the requested State in the context of an arrest ordered pursuant to an extradition request based on a national arrest decision which was issued in breach of the fundamental rights of the person concerned. The present question seeks only to ascertain what information must be provided to the accused person, when he or she is arrested in the Member State executing a European arrest warrant, before the surrender of that person to the Member State which issued that warrant.
- 59 In that regard, it should be noted that the information which must necessarily accompany a European arrest warrant makes it possible, when the accused person is arrested in the Member State executing that warrant, to provide that person with such information as is necessary to meet the requirements arising from Article 5 ECHR. As noted in paragraph 42 above, the person arrested in the executing Member State on the basis of a European arrest warrant receives the information that is provided for, inter alia, in Article 8(1)(d) and (e) of Framework Decision 2002/584 and that corresponds, in essence, to that referred to in Article 6 of Directive 2012/13, thus ensuring, in respect of that person, observance of the requirements arising from Article 5 ECHR in that, in particular, that information enables him or her to understand the reasons for his or her arrest and, potentially, to challenge that arrest.

- 60 It follows that Articles 6 and 47 of the Charter do not require the issuing judicial authority to forward to the person who is the subject of a European arrest warrant within the meaning of Framework Decision 2002/584, before his or her surrender to the competent authorities of the issuing Member State, the national decision on the arrest of that person and information on the possibilities of challenging that decision. Articles 6 and 47, thus interpreted, provide protection for the rights of that person which is no less than that provided by Article 5 ECHR.
- 61 In the second place, neither the right to freedom of movement and residence nor the principles of equality and mutual trust, mentioned by the referring court in its first question, can alter that conclusion.
- 62 As regards, first of all, the right to freedom of movement and residence, the referring court invokes a possible difference in treatment resulting from the fact that a person who is the subject of a European arrest warrant and who is arrested in the executing Member State will receive all the information on the national proceedings brought against him or her only at the time he or she is surrendered in the issuing Member State, unlike a person arrested in the issuing Member State pursuant to a national arrest warrant.
- 63 It must be noted from the outset that the case-law of the Court, to which the referring court refers, cannot be applied in order to establish the existence of such a difference in treatment, since that case-law concerns a specific situation in which the national rules of a Member State on extradition give rise to a difference in treatment depending on whether the requested person is a national of that Member State or a national of another Member State. The rules at issue in the case-law in question have the consequence that nationals of other Member States who are lawfully resident in the territory of the requested Member State are not afforded the protection against extradition enjoyed by nationals of that Member State and are therefore liable to affect the freedom of the nationals of other Member States to move and reside in the territory of the Member States (see, to that effect, judgment of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)*, C-398/19, EU:C:2020:1032, paragraph 39 and the case-law cited).
- 64 As the European Commission states in its written observations, it should be noted that, in view of the aim of the European arrest warrant mechanism – which, in accordance with Article 1(1) of Framework Decision 2002/584, 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 13 January 2021, *MM*, C-414/20 PPU, EU:C:2021:4, paragraph 76 and the case-law cited) – an accused person subject to a European arrest warrant who is in a Member State different from the Member State in which he or she has allegedly committed a criminal offence is not in the same situation as an accused person who has remained in the latter Member State. In order to prevent the risk of impunity, the person who is the subject of the European arrest warrant must, before a criminal prosecution is conducted against him or her by the competent authorities of the issuing Member State, be, in principle, in accordance with the provisions of Framework Decision 2002/584, surrendered to those authorities. It is only once that person has been surrendered to those authorities that his or her situation, as regards the right to information in criminal proceedings brought against him or her in the issuing Member State in which the offence was allegedly committed, will be comparable to that of the person who has remained in that Member State.

- 65 Next, similarly, as regards the principle of equivalence, compliance with which requires the rule in question – which, in this case, is governed by the law of the issuing Member State – to apply without distinction to procedures based on infringement of EU law and those based on infringement of national law having a similar purpose and cause of action (judgment of 10 February 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Limitation period)*, C-219/20, EU:C:2022:89, paragraph 43 and the case-law cited), that principle can apply only when the person arrested on the basis of a European arrest warrant is surrendered to the judicial authorities of that Member State. It is at that time that that person must enjoy, in accordance with the principle of equivalence, as regards the procedural rules not provided for in EU law, the same procedural rights as those enjoyed by a person detained in the issuing Member State solely pursuant to national law, since their situations are, at that time, comparable.
- 66 Nothing in the file submitted to the Court permits the inference that, when surrendered to the judicial authorities of the issuing Member State, the person detained will receive less favourable treatment than that received by a person detained in that State solely pursuant to its national law.
- 67 Lastly, as the Commission states, the fact that, unlike extradition procedures, the procedure provided for in Framework Decision 2002/584 does not require the national decision on which the European arrest warrant is based to be forwarded not only does not run counter to the principle of mutual trust, but is in fact an expression of that principle.
- 68 The Court has reiterated on numerous occasions that Framework Decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (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 42).
- 69 It follows from the foregoing considerations that the answer to the first question is that Articles 6 and 47 of the Charter, the right to freedom of movement and residence and the principles of equality and mutual trust must be interpreted as meaning that the judicial authority issuing a European arrest warrant, adopted under Framework Decision 2002/584, is under no obligation to forward to the person who is the subject of that arrest warrant the national decision on the arrest of that person and information on the possibilities of challenging that decision, while that person is in the Member State executing the European arrest warrant and has not been surrendered to the competent authorities of the Member State issuing that arrest warrant.

### ***The second question***

- 70 By its second question, the referring court asks, in essence, whether the principle of primacy of EU law must be interpreted as meaning that, in order to ensure compliance with Framework Decision 2002/584, first, the issuing judicial authority is required not to forward to the person who is the subject of a European arrest warrant, before his or her surrender to the judicial authorities of the issuing Member State, the national decision on his or her arrest and information on the possibilities of challenging that decision, even though its national law requires it to do so, and, secondly, where, notwithstanding such an absence of information, that person challenges the national decision on his or her arrest, the issuing judicial authority is required to examine that challenge only after the surrender of that person.

- 71 It must be noted from the outset that the second part of the second question is hypothetical. That part of the second question is based on the assumption that the person who is the subject of a European arrest warrant and who is arrested in the Member State executing that warrant challenges in the issuing Member State, before his or her surrender, the decision on the national arrest warrant on which the European arrest warrant is based.
- 72 Although, in order to ensure observance of the fundamental rights of that person – which may lead a judicial authority to decide to issue a European arrest warrant – such an authority must be able to refer questions to the Court for a preliminary ruling, that ability is subject to the condition that the answer to the question referred by the referring court is necessary to enable it to adopt a new European arrest warrant in respect of the accused person, in a manner consistent with Framework Decision 2002/584 (see, to that effect, judgment of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)*, C-649/19, EU:C:2021:75, paragraphs 38 and 39), which is not the case as regards the second part of the second question. Consequently, that part of the second question is inadmissible.
- 73 As regards the first part of that question, it should, in the first place, be examined whether Framework Decision 2002/584 precludes national law from requiring the issuing judicial authority to forward to the person who is the subject of a European arrest warrant, before his or her surrender to the competent authorities of the issuing Member State, the national decision on his or her arrest and information on the possibilities of challenging that decision.
- 74 As noted in paragraph 64 above, in accordance with Article 1(1) of Framework Decision 2002/584, the aim of the European arrest warrant mechanism 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.
- 75 In that regard, Framework Decision 2002/584 established a simplified and more efficient system for the surrender between judicial authorities of persons who have been convicted or are suspected of having infringed criminal law, which makes it possible to remove, as stated in recital 5 of the framework decision, the complexity and potential for delay inherent in the extradition procedures that existed before the adoption of that decision (judgment of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 54).
- 76 Thus, in order to simplify and accelerate the surrender procedure in accordance with the time limits laid down by Article 17 of Framework Decision 2002/584, the annex to the decision provides a specific form which the issuing judicial authorities are required to complete, furnishing the specific information requested. The purpose of that information, which is set out in Article 8 of Framework Decision 2002/584, is to provide the minimum official information required to enable the executing judicial authorities to give effect to the European arrest warrant swiftly by adopting their decision on the surrender as a matter of urgency (see, to that effect, judgment of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraphs 57 and 59).
- 77 Given that, in accordance with Article 17(1) of that framework decision, a European arrest warrant must be dealt with and executed as a matter of urgency, the examination of the law of the issuing Member State which the executing judicial authority is required to conduct in applying Article 2(2) thereof, must necessarily be timely and, accordingly, be carried out on the basis of the information available in the European arrest warrant itself (judgment of 3 March 2020, X (*European arrest warrant – Double criminality*), C-717/18, EU:C:2020:142, paragraph 37).

- 78 The objective of speeding up and simplifying the surrender procedure between Member States, pursued by Framework Decision 2002/584, would be compromised if the issuing judicial authority were required to forward to the person who is the subject of the European arrest warrant, before the surrender of that person to the competent authorities of the issuing Member State, the national decision on his or her arrest and information on the possibilities of challenging that decision. The forwarding of that information and of that decision is liable to hinder the implementation, by the executing judicial authority, of the simplified system of surrender of the accused person established by that framework decision, since that authority would be required, in order to ensure a correct application of the national procedural rules of the issuing Member State, to ensure that the accused person has received the information in question.
- 79 In the situation envisaged in the preceding paragraph, the surrender procedure might become appreciably more complicated and its duration might be significantly extended, at the risk of compromising the objective pursued by Framework Decision 2002/584, and referred to in paragraphs 64 and 74 above, of avoiding the impunity of the person whose surrender is requested.
- 80 Consequently, it must be held that Framework Decision 2002/584 precludes national law from requiring the issuing judicial authority to forward to the person who is the subject of a European arrest warrant, before his or her surrender to the competent authorities of the issuing Member State, the decision on his or her arrest and information on the possibilities of challenging that decision.
- 81 In the light of that finding, it should, in the second place, be borne in mind that the principle of the primacy of EU law establishes the pre-eminence of EU law over the law of the Member States and therefore requires all Member State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those various provisions in the territory of those States (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 53 and 54).
- 82 Although Framework Decision 2002/584 does not have direct effect under the EU Treaty itself, its binding character places on national authorities an obligation to interpret national law in conformity with EU law as from the date of expiry of the period for the transposition of that framework decision (see, to that effect, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 71 and 72).
- 83 Although the principle of conforming interpretation cannot serve as the basis for an interpretation of the domestic law of a Member State *contra legem*, it nevertheless requires that the whole body of that domestic law be taken into consideration and that the interpretative methods recognised by domestic law be applied, with a view to ensuring that the framework decision concerned is fully effective and to achieving an outcome consistent with the objective pursued by it (see, to that effect, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 76 and 77).
- 84 In the light of the foregoing considerations, the answer to the second question is that the principle of the primacy of EU law must be interpreted as meaning that it requires the issuing judicial authority to give, as far as is possible, an interpretation of its national law that is in conformity with EU law, which enables it to ensure an outcome that is compatible with the aim pursued by Framework Decision 2002/584, which precludes national law from requiring that authority to

forward to the person who is the subject of a European arrest warrant, before his or her surrender to the judicial authorities of the issuing Member State, the national decision on his or her arrest and information on the possibilities of challenging that decision.

### *The third question*

- 85 In view of the answer given to the second question, there is no need to answer the third question.

### **Costs**

- 86 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:

1. **Articles 6 and 47 of the Charter of Fundamental Rights of the European Union, the right to freedom of movement and residence and the principles of equality and mutual trust must be interpreted as meaning that the judicial authority issuing a European arrest warrant, adopted under 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, is under no obligation to forward to the person who is the subject of that arrest warrant the national decision on the arrest of that person and information on the possibilities of challenging that decision, while that person is in the Member State executing the European arrest warrant and has not been surrendered to the competent authorities of the Member State issuing that arrest warrant.**
2. **The principle of the primacy of EU law must be interpreted as meaning that it requires the issuing judicial authority to give, as far as is possible, an interpretation of its national law that is in conformity with EU law, which enables it to ensure an outcome that is compatible with the aim pursued by Framework Decision 2002/584, as amended by Framework Decision 2009/299, which precludes national law from requiring that authority to forward to the person who is the subject of a European arrest warrant, before his or her surrender to the judicial authorities of the issuing Member State, the national decision on his or her arrest and information on the possibilities of challenging that decision.**

[Signatures]