



Press and Information

Court of Justice of the European Union

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Judgment in Case C-414/20 PPU  
MM

**A European arrest warrant must be regarded as being invalid when it is not based on a national arrest warrant or any other enforceable judicial decision having the same effect**

*It is for the court having jurisdiction in the issuing Member State to determine, in the light of national law, what consequences the absence of a valid national arrest warrant may have on the decision to place and then keep a person in provisional detention who is the subject of a criminal prosecution*

Criminal proceedings were initiated in Bulgaria against 41 individuals for having participated in a criminal drug trafficking organisation. Sixteen of them, including, MM, absconded.

By order of 9 August 2019, the Bulgarian investigating body, with the consent of the public prosecutor, placed MM under investigation for having participated in a criminal drug trafficking organisation. As MM had absconded, that order was intended only to inform him of the charges against him.

On 16 January 2020, the public prosecutor issued a European arrest warrant for MM. Under the section relating to 'the decision on the basis of which the arrest warrant has been issued', reference is made only to the order of 9 August 2019, by which MM was put under investigation. In execution of that warrant, MM was arrested in Spain and was surrendered to the Bulgarian judicial authorities.

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 provisional detention.

Seised by MM, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) asks the Court of Justice, inter alia, whether, under European Union law, <sup>1</sup> a European arrest warrant must be regarded as being invalid when it is not based on a national arrest warrant or any other judicial decision having the same effect. In addition, that court asks whether, where provision is not made in the legislation of the issuing Member State, the national court before which an action has been brought to challenge the lawfulness of the continued provisional detention of a person who has been surrendered pursuant to a European arrest warrant issued by an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, has jurisdiction to review the validity of the conditions under which that warrant was issued. Lastly, it asks whether a finding that the issuing of the warrant was in breach of EU law has the effect of releasing a person in provisional detention following his surrender by the executing Member State to the issuing Member State.

By judgment delivered today, the Court finds, first, that the status of 'issuing judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, is not conditional on the availability of a review by a court of the decision to issue the European arrest warrant and of the national decision upon which that warrant is based.

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<sup>1</sup> 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 - Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002 L 190, p. 1.

The Court then points out that the system of the European arrest warrant is founded on the principle of mutual recognition, which is based on the reciprocal trust between Member States that a European arrest warrant has been issued in compliance with the minimum requirements on which its validity depends. EU law<sup>2</sup> provides, among other things, that the European arrest warrant must be based on ‘an arrest warrant or any other enforceable judicial decision having the same effect’.

Consequently, **a measure which serves as the basis for a European arrest warrant must, even if it is not referred to as a ‘national arrest warrant’, produce equivalent legal effects, that is to say, allow for 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.** The Court notes that the national measure which was the basis for issuing the European arrest warrant in respect of MM was delivered solely to notify him of the charges against him and to give him the possibility of defending himself by providing explanations or offers of evidence.

In that regard, the Court finds that **it does not appear, which it is for the referring court to establish, that the European arrest warrant at issue has its legal basis in ‘an arrest warrant or any other enforceable judicial decision having the same effect’, and that it must therefore be regarded as invalid.**

Furthermore, the Court reiterates that, in accordance with its case-law<sup>3</sup>, the European arrest warrant system entails a dual level of protection. Accordingly, in addition to the judicial protection provided when a national decision is adopted, such as a national arrest warrant, there is the protection provided when a European arrest warrant is issued.

As regards a measure 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. The Member States must ensure that their legal orders effectively safeguard the level of judicial protection required, by means of remedies that they put in place and which may differ from one national legal system to another.

In that regard, the Court finds that where the procedural law of the issuing Member State does not provide for a separate remedy allowing a court to review the conditions under which a European arrest warrant is issued and its proportionality, neither before nor concomitantly with its adoption nor subsequently, Framework Decision 2002/584, 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 meaning that a court which is called upon to give a ruling at a stage in the criminal proceedings subsequent to the surrender of the requested person must be able to review, indirectly, the conditions under which that warrant was issued where an action has been brought before it to challenge its validity.

Lastly, the Court observes that the aim of the mechanism of the European arrest warrant is to enable the arrest and surrender of a requested person 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. It follows that, 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 and that it is not an order for the detention of the person sought in the issuing Member State.

In addition, in the absence of any harmonisation of the conditions under which a person who is the subject of a criminal prosecution can be placed and kept in provisional detention, it is only in 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 such conditions are no longer met.

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<sup>2</sup> Article 8(1)(c) of Framework Decision 2002/584.

<sup>3</sup> 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](#), and *Openbaar Ministerie (Swedish Public Prosecutor’s Office)*, [C-625/19 PPU](#) (see Press Release No [156/19](#)).

The Court concludes therefore that **it is solely for the national court having jurisdiction 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 a person who is the subject of a criminal prosecution in provisional detention.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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