

Case C-71/21**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

4 February 2021

Referring court:

Sofiyski gradski sad (Bulgaria)

Date of the decision to refer:

4 February 2021

Requested person:

KT

Public prosecution service:

Sofiyska gradska prokuratura

Subject matter of the main proceedings

The main proceedings were initiated by a request for the execution of an arrest warrant issued on the basis of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway.

Subject matter and legal basis of the request

The request for a preliminary ruling concerns the interpretation of Article 1(2) and (3) of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway, of Articles 21(1) and 67(1) of the Treaty on the Functioning of the European Union, and of Articles 6 and 45(1) of the Charter of Fundamental Rights of the European Union. The request concerns a case in which, following a request for the execution of an arrest warrant issued on the basis of the abovementioned agreement, a Member State refused to surrender the requested person, who subsequently moved to another

Member State, to which a new arrest warrant for that person, issued for the purposes of criminal prosecution in the same case, has subsequently been addressed. The referring court asks that this request 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.

Questions referred for a preliminary ruling

1. Do the provisions of Article 1(2) and (3) of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway allow the issue of a new arrest warrant for the purposes of criminal prosecution in the same case against a person whose surrender has been refused by a Member State of the European Union on the basis of Article 1(3) of that agreement, read in conjunction with Article 6 of the Treaty on European Union and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms?
2. Do the provisions of Article 1(3) of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway, as well as those of Articles 21(1) and 67(1) of the Treaty on the Functioning of the European Union and those of Articles 6 and 45(1) of the Charter of Fundamental Rights of the European Union, allow a Member State, to which an arrest warrant is addressed, to rule again in the case in which another Member State refused to surrender the same person for the purposes of criminal prosecution in the same case, after the requested person has exercised his or her right of free movement and moved from the State in which surrender had been refused to the State to which the new arrest warrant is addressed?

Provisions of EU law and EU case-law cited

Article 1(2) and (3) of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

Article 6 of the Treaty on European Union

Article 21(1) and Article 67(1) of the Treaty on the Functioning of the European Union

Article 6 and Article 45(1) of the Charter of Fundamental Rights of the European Union

Judgment of the Court of Justice of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262

Judgment of the Court of Justice of 25 July 2018, *AY* (Arrest warrant – Witness), C-268/17, EU:C:2018:602

Provisions of national law cited

Article 4(1) of the *Zakon za ekstraditsiata i evropeyiskata zapoved za arest* (Law on extradition and the European arrest warrant)

Succinct presentation of the facts and procedure in the main proceedings

- 1 The proceedings before the referring court were brought at the request of the Sofiyska gradska prokuratura (Public Prosecutor's Office for the City of Sofia, Bulgaria) for the execution of an arrest warrant against KT, who holds both Bulgarian and US nationality. That arrest warrant was issued by the Regional Public Prosecutor's Office in Hordland (Norway) on 12 March 2020 ('the arrest warrant of 12 March 2020'). That arrest warrant requested the surrender of KT for the purposes of conducting a criminal prosecution against him on the charge of committing fraud detrimental to the Norwegian social security system on several occasions. His former partner, a Norwegian national, was a defendant in those proceedings, in addition to KT and other persons. KT and his partner lived together as a cohabiting couple and have two children who were born while they were living together.
- 2 In those criminal proceedings conducted in Norway, an arrest warrant was issued for KT. On 26 July 2018, a wanted persons alert was issued for him in the Schengen Information System. In July 2019, the bill of indictment was filed with the first-instance court in Bergen (Norway). In the absence of KT, that court convicted a number of the other accused persons, including his former partner.
- 3 On 25 November 2019, KT was arrested in Poland on foot of the alert issued in the Schengen Information System by the Norwegian authorities. After being notified of his apprehension, the Norwegian public prosecutor's office issued an arrest warrant on 27 November 2019 ('the arrest warrant of 27 November 2019') on the basis of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway ('the Agreement on the surrender procedure'). By a judgment of 15 January 2020 delivered in the proceedings on the execution of the arrest warrant, the District Court, Warsaw (Poland), refused to surrender KT.
- 4 As justification for its refusal, the District Court, Warsaw, relied on Article 1(3) of the Agreement on the surrender procedure, which refers to Article 6 of the Treaty on European Union (TEU). That court found that it had been established that there was a protracted conflict between KT and his former partner over the custody of their two children, and that, in judicial proceedings conducted between the two former partners, KT had been awarded custody in Bulgaria by decisions of

Bulgarian courts. The District Court, Warsaw, took the view that a possible surrender of KT to the Norwegian authorities would lead to a breach of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), since, on the one hand, KT's former partner is serving a custodial sentence handed down in criminal proceedings in Norway and, on the other hand, following his surrender, KT would have to be remanded in custody pending trial, as a result of which the children would have to be taken into the care of a foster family, which would lead to a permanent severance of his relationship with them. That court held that, even if KT were not surrendered to the Norwegian authorities, the latter could use other forms of cooperation with Bulgaria under international law for the purposes of the prosecution that they were conducting.

- 5 The decision of the District Court, Warsaw, refusing to surrender KT was challenged by the Public Prosecutor's Office before the Court of Appeal, Warsaw, which, by judgment of 24 February 2020, dismissed the appeal. By order of 6 March 2020, the District Court, Warsaw, lifted the restrictive measures imposed in the course of the proceedings concluded in Poland.
- 6 On 10 March 2020, KT was arrested again upon his return to Bulgaria on the basis of the wanted person alert registered in the Schengen Information System. After the Bulgarian authorities had notified the Norwegian authorities of the arrest, the Regional Public Prosecutor's Office in Hordland (Norway) issued the arrest warrant of 12 March 2020. That arrest warrant requested the surrender of KT in order to make it possible to conduct the same criminal proceedings in Norway for the purpose of which the arrest warrant of 27 November 2019 transmitted to Poland had already been issued, the execution of which had been refused by the District Court, Warsaw.
- 7 On 19 March 2020, the 'signing-on' measure was imposed on KT, obliging him not to leave his residence without the authorisation of the relevant authority. In addition, he was prohibited from leaving the Republic of Bulgaria. The Norwegian authorities informed the referring court that, due to the health crisis caused by COVID-19, the case against KT would be heard by the first-instance court in Bergen only in October 2020 at the earliest, with the result that it was not necessary to surrender him to Norway before September 2020. At the same time, the proceedings before the referring court were delayed because KT was admitted to health facilities for treatment on several occasions between April and July 2020. A forensic medical report introduced into the proceedings in October 2020 stated that his state of health was seriously impaired and at risk of a recurrence of thromboembolic emergency (thrombosis formation causing the blockage of a blood vessel), putting him in the group of persons most at risk in the event of infection with COVID-19. As his state of health did not allow him to travel from Shumen, where he was residing, to Sofia, KT attended the two court hearings before the referring court – which took place in December 2020 and February 2021 – by means of video link.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 8 The referring court takes the view that an interpretation of the provisions of EU law mentioned in the questions referred is required in order to resolve the dispute in the main proceedings. It seeks clarification as to whether, under those provisions, there are any obstacles to the execution of the arrest warrant of 12 March 2020 that arise from the refusal to execute the arrest warrant of 27 November 2019 issued by the same authority against the same person for the purpose of securing his surrender in order to conduct the same criminal proceedings.
- 9 Under Article 1(3) of the Agreement on the surrender procedure, the fundamental rights and fundamental legal principles as enshrined in the ECHR, or, in case of execution by the judicial authority of a Member State, the principles referred to in Article 6 TEU, must be respected. On that basis, the District Court, Warsaw, refused to execute the arrest warrant of 27 November 2019 owing to a possible infringement of the right to family life under Article 8 ECHR. The referring court points out that the factual circumstances that led to the application of Article 8 [ECHR] continue to exist at the time of the order for reference, as KT is raising in Bulgaria his two children, who were born while he was living together with his former partner.
- 10 The referring court takes the view that the case-law of the Court of Justice on the interpretation 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; ‘Framework Decision 2002/584’) is applicable *mutatis mutandis* to the interpretation of the Agreement on the surrender procedure, since the latter is an integral part of EU law (see, to that effect, judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 49) and, in addition, the provisions of the Agreement on the surrender procedure are very similar to the corresponding provisions of Framework Decision 2002/584 (judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 74).
- 11 Thus, in the judgment of 25 July 2018, *AY* (C-268/2017, EU:C:2018:602), the Court held that there is no obstacle to the issue of several European arrest warrants against the same person in the same criminal proceedings. However, the referring court takes the view that the factual circumstances and legal considerations in the proceedings in which that judgment was delivered differ from those in the main proceedings in the present case. In the case underlying Case C-268/2017, the first European arrest warrant was issued in the course of the investigation and the second for the purpose of conducting the judicial proceedings against the requested person. By contrast, in the main proceedings in the present case, both arrest warrants (of 27 November 2019 and of 12 March 2020) were issued at the same stage of the criminal proceedings, namely the trial stage, after the indictment had been submitted to the first-instance court in Bergen in July 2019.

- 12 Moreover, in the judgment of 25 July 2018, *AY* (C-268/2017, EU:C:2018:602), the Court of Justice referred to Article 1(2) of Framework Decision 2002/584, which obliges Member States to execute any European arrest warrant addressed to them. The referring court notes, however, that the Agreement on the surrender procedure contains no such provision for Contracting States. Under those circumstances, the question arises as to whether such an obligation on the part of the Contracting States can be assumed.
- 13 The referring court seeks to ascertain whether, pursuant to Article 1(2) of the Agreement on the surrender procedure, a refusal by a court of a Member State to execute an arrest warrant on the basis of paragraph 3 of the aforementioned Article 1 [of the Agreement on the surrender procedure], read in conjunction with Article 6 TEU and Article 8 ECHR, is binding on the other Member States and on Norway and Iceland by virtue of their reciprocal obligations under that agreement. The referring court states that the refusal of the District Court, Warsaw, to execute the arrest warrant of 27 November 2019 was justified by reference to principles enshrined in Article 6 TEU and the ECHR and common to all Member States.
- 14 From those considerations, the referring court derives, in particular, the question of whether it is permissible for a court of a Member State to rule again on the substance of a previous refusal by the court of another Member State to surrender a requested person in response to a subsequent arrest warrant issued on the basis of the Agreement on the surrender procedure at the same stage of the criminal proceedings, in the case where that refusal is based on principles binding on all Member States of the European Union, which constitutes an area of freedom, security and justice in accordance with Article 67(1) of the Treaty on the Functioning of the European Union (TFEU).
- 15 The referring court takes the view that the answer to that question is essential in order to clarify whether a person sought under an arrest warrant issued on the basis of the Agreement on the surrender procedure may exercise his or her right of free movement under Article 21(1) TFEU, his or her right to liberty and security under Article 6 of the Charter of Fundamental Rights of the European Union and his or her right to freedom of movement under Article 45 of the Charter after a court of a Member State has refused to execute the arrest warrant in question. This is the position in the main proceedings, since, following the refusal of the District Court, Warsaw, to execute the arrest warrant of 27 November 2019, KT exercised his right of free movement and returned to Bulgaria, where he was re-arrested, and that re-arrest led to the issue of the arrest warrant of 12 March 2020.
- 16 As regards the request for the urgent procedure under Article 107 of the Rules of Procedure of the Court of Justice, the referring court points out that the request for a preliminary ruling raises questions concerning the areas covered by Part Three, Title V, of the FEU Treaty. It states that the time limits provided for in Article 20 of the Agreement on the surrender procedure have not been observed. This is attributable both to the Norwegian authorities' express declaration that it would be impossible to hear the case against KT before October 2020 and to the

deterioration of KT's state of health. At the time of submission of this request for a preliminary ruling, those obstacles no longer exist.

- 17 The referring court points out that, although KT is not being detained, his rights of free movement are nevertheless restricted due to the 'signing-on' measure imposed on him. In addition, he was prohibited from leaving the Republic of Bulgaria. The referring court takes the view that the above circumstances, including KT's deteriorated state of health, justify the urgency of the proceedings.

WORKING DOCUMENT