

Case C-105/21**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:**

22 February 2021

Referring court or tribunal:

Spetsializiran nakazatelen sad (Bulgaria)

Date of the decision to refer:

22 February 2021

Criminal proceedings against:

IR

Subject matter of the main proceedings

Issuance of a European arrest warrant in respect of the accused person IR.

Subject matter and legal basis of the request

The request for a preliminary ruling is made pursuant to point (b) of the first paragraph of Article 267 TFEU.

Questions referred 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, the principle of equality and the principle of mutual trust if the issuing judicial authority, according to 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 bases for his or her arrest and of the right to challenge the arrest warrant?
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?

EU legislation and case-law relied on

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

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)

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1)

Charter of Fundamental Rights of the European Union (OJ 2016 C 202, p. 389)

Judgment of the Court of Justice of 28 January 2021, *IR*, C-649/19, ECLI:EU:C:2021:75

Provisions of national law relied on

Nakazatелno-protsesualen kodeks (Code of Criminal Procedure, Bulgaria; ‘the NPK’)

Nakazatелn kodeks (Criminal Code, Bulgaria; ‘the NK’)

Zakon za ekstraditsiata i evropeyiskata zapoved za arest (Law on extradition and the European arrest warrant, Bulgaria; ‘the ZEEZA’)

Succinct presentation of the facts and procedure in the main proceedings

- 1 Proceedings were brought against IR for participation in a criminal organisation that allegedly contrived to transport large quantities of excise goods without strip stamps (cigarettes) across national borders for the purpose of financial gain, punishable by ‘imprisonment’ of up to 10 years under Article 321 of the NK, and for aiding and abetting in the storage of 373 490 cigarette packets without strip stamps, worth 2 801 175 Bulgarian leva (BGN) (EUR 1 413 218), punishable under Article 234 of the NK by ‘imprisonment’ of up to 8 years.

- 2 In the pre-trial stage of the proceedings, IR was informed of his general rights as an accused person.
- 3 When the trial phase of the proceedings commenced, on 24 February 2017, IR had left his home address. The efforts of the court to determine his place of residence were unsuccessful. The two lawyers chosen by him declared that they no longer represented him. The court appointed a new lawyer to represent him (the defence of an absent accused person by a lawyer is mandatory under the national legislation).
- 4 By order of 10 April 2017, upheld on appeal on 19 April 2017, the referring court issued an order remanding IR in detention pending trial, which constituted a national arrest warrant. IR did not take part in the proceedings and was represented by the officially appointed lawyer.
- 5 A European arrest warrant (EAW) was issued on 25 May 2017. It stated that the national arrest warrant had been issued in the absence of IR, that the national arrest warrant would be handed over to IR in person upon his surrender following execution of the European arrest warrant, and that he would be informed of his rights and would be able to challenge that arrest warrant, whereby he would be informed of the possibilities available in that regard. It was also explained to him that he would be able to challenge the arrest warrant only after he had been surrendered to the Bulgarian authorities. An alert for the European arrest warrant was issued in the Schengen Information System; IR has still not been located and arrested.
- 6 On 20 August 2019, the referring court withdrew the European arrest warrant and submitted the request for a preliminary ruling in Case C-649/19. The judgment of the Court of Justice was delivered on 28 January 2021 (C-649/19, EU:C:2021:75).

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

Admissibility of the questions referred

- 7 These questions are raised with a view to issuing a European arrest warrant against IR. Depending on the answers to the questions, the referring court will know how to complete it – for example, whether to include in the European arrest warrant the information to be provided to the accused person about the rights he has in relation to the national arrest warrant, or whether to request, by way of the European arrest warrant, notification from the executing authority of the time when IR is found and/or arrested and to inform IR thereafter, and, furthermore, whether the referring court is to send to the requested person the national arrest warrant by which such information would be provided if it were informed that IR has been found (whether arrested or not), for example when communicating with the executing authority pursuant to Article 15(2) of Framework Decision 2002/584. Thirdly, the referring court also needs to know how to proceed with a

request for the withdrawal of the arrest warrant, which can be made even if such information has not been provided.

- 8 The latter two scenarios are realistic possibilities which, generally speaking, could materialise after the European arrest warrant has been issued and before the person is surrendered. If the referring court were to wait until they actually materialised – specifically until IR is found or requests the withdrawal of the arrest warrant – before making the request for a preliminary ruling, it would not be able to obtain a useful answer, and this is because, even in an expedited procedure, it takes more time for the Court of Justice to give a ruling than for a European arrest warrant to be executed.

Grounds for the questions referred

– General

- 9 The questions referred arise in the context of the requested person's possibilities for challenging the arrest warrant (judgment of 28 January 2021, *IR*, C-649/19, EU:C:2021:75, paragraph 69), more specifically in the period after the requested person has been arrested in the executing State and before he or she has been surrendered to the issuing State.
- 10 It is apparent from the Court of Justice's judgment in Case C-649/19 that the provisions of Articles 4, 6 and 7 of Directive 2012/13 do not apply to the provision of information to the requested person before he or she is surrendered. Therefore, the issuing judicial authority is under no obligation under that directive to inform the requested person before he or she is surrendered. However, the question arises as to whether that outcome is at odds with the principles on which EU law is based.
- 11 Furthermore, it is clear from paragraphs 79 and 80 of that judgment that the right to effective judicial protection is respected if the requested person can challenge the arrest warrant after he or she is surrendered, with the result that, by *a contrario* reasoning, such a remedy prior to surrender is not necessary for effective judicial protection. This raises the question of whether there would be an infringement of EU law if the national rule requiring such provision of information and a right to a remedy were applied even if the requested person were not in the national territory.
- Application of Article 6 TEU, read in conjunction with Article 6 of the Charter, read in conjunction with Article 5(4) and (2) and with Article 5(1)(c) ECHR
- 12 According to Article 6 TEU, the Union recognises the rights set out in the Charter. The right to liberty and security is recognised in Article 6 of the Charter. According to the Explanations relating to the Charter, the rights under Article 6 correspond to the rights under Article 5 ECHR. Under Article 5(2) and (4) ECHR, any person arrested in accordance with Article 5(1)(c) ECHR has the right to know the factual and legal reasons for his or her arrest and to challenge the

lawfulness of his or her detention before a court. The perspective of the ECtHR is therefore required.

- 13 There is no doubt that a person arrested on the basis of a European arrest warrant falls within the scope of Article 5(1)(f) ECHR. Where the executing State has conscientiously fulfilled its obligations under Article 5(1)(f) ECHR, but the basis of that arrest is a defective national arrest warrant issued by the requesting State, the ECtHR has clearly ruled that it is specifically the requesting State that is responsible for the violation of Article 5, its responsibility being determined by Article 5(1)(c) ECHR.
- 14 Regarding extraterritoriality, the ECtHR has ruled that while every State in principle exercises its judicial competence on its own territory, it is possible, under certain circumstances, for it to exercise its powers on the territory of another State. In doing so, it remains responsible for its actions (judgments of the ECtHR, *Stephens v Malta*, No 11956/07, § 49, *Vasiliciuc v Republic of Moldova*, No 15944/11, § 25, and *Belozorov v Russia and Ukraine*, No 43611/02, §§ 84 to 87).
- 15 As stated by the ECtHR, a State may exercise its powers, including those in the field of criminal law, including [those] in relation to the arrest of an accused person, in the territory of another State, with the consent of the latter.
- 16 The ECtHR has, in a number of cases, addressed the question of which State is responsible for an arrest in the context of extradition when the requested state has acted in good faith, in accordance with national and international law, but that detention is wrong because the national arrest warrant on the basis of which the extradition request was issued was defective in the requesting State. In those cases, the ECtHR emphasised that the basis of the arrest under Article 5(1)(f) ECHR is that defective national decision of the requesting state. The ECtHR also stressed that the requesting member State must ensure the validity of its national arrest warrant. For that reason, the ECtHR held that if the national arrest warrant on the basis of which the extradition request was issued is defective, the requesting member State is responsible for the detention in the executing State. The arrest in the requested State constitutes an arrest under Article 5(1)(c) ECHR.
- 17 The ECtHR has not denied a person arrested in an extradition procedure under Article 5(1)(f) the status of an ‘arrested accused person’ under Article 5(1)(c) ECHR. On the contrary, it has proceeded on the assumption that the person arrested enjoys the guarantees relating to his or her status as an ‘accused person’ in the main proceedings, in particular the presumption of innocence and the right to challenge the arrest warrant. It should be expressly emphasised that the ECtHR regards those rights as rights against the issuing State, which conducts the main proceedings. It does not treat them as rights against the executing State, which conducts the extradition procedure, since the latter cannot assess the merits of the detention in the main proceedings.

- 18 The arrest of the requested person is therefore subject to a dual regime, since the accused person in the main proceedings remains an accused person even if he or she was arrested in another State. The issuing judicial authority must ensure the guarantees under Article 5(1)(c) ECHR (and, if the deprivation of liberty lasts longer than a certain period of time, also the guarantees under Article 5(3) and (4) ECHR), while the executing judicial authority must ensure the guarantees under Article 5(1)(f) ECHR.
- 19 The ECtHR does not take the view that the requirement of Article 5(1)(c) ECHR does not apply to the period during which the national arrest warrant forms the basis for the European arrest warrant and that it applies only after the surrender of the requested person. This is also in line with the case-law of the Court of Justice of the European Union. The Court of Justice has never argued that a valid European arrest warrant may be issued on the basis of an invalid national arrest warrant. On the contrary, the Court of Justice has held that a European arrest warrant can be issued only on the basis of a valid national arrest warrant (judgments in Cases C-241/15, *Bob-Dogi*, EU:C:2016:385, and C-414/20, EU:C:2021:4).
- 20 Article 6 of the Charter has the same scope as Article 5 ECHR, with the result that it follows from the conclusions drawn by the ECtHR in the cases cited, carried over to the level of EU law, that the national arrest warrant on the basis of which the European arrest warrant is issued is executed by the arrest of the requested person in the territory of the executing State.
- 21 More specifically, owing to its dual nature, the arrest always falls under two legal categories in the executing State, the requested person being protected at two levels. The first category is that under Article 5(1)(f) ECHR – or the arrest as regulated in Framework Decision 2002/584, with all the guarantees provided for therein. The second category is the arrest under Article 5(1)(c) ECHR – or the arrest in the executing State in execution of the national arrest warrant.
- 22 In this case, the requested person must receive from the issuing State the guarantees under Article 5(2) and (4) ECHR relating to his or her status as an accused person. This is what provides assurance that the national arrest warrant is lawful. Such assurance can be guaranteed only if the necessary information about the factual and legal reasons for the arrest and the possibilities for challenging it is provided.
- 23 The Court of Justice has held that the person in respect of whom the national arrest warrant was issued has had the benefit of all safeguards appropriate to the adoption of that type of decision, inter alia those derived from the fundamental rights (judgment in Case C-509/18, EU:C:2019:457, paragraph 48). The expression ‘all safeguards appropriate to the adoption of that type of decision’ is to be understood as meaning that those safeguards apply at the time of arrest in accordance with Article 5(1)(c) ECHR, which – according to the judgments of the ECtHR cited above – is made by means of the arrest in the executing State. That

expression should also encompass the provision of information about the arrest warrant if it was issued in the absence of the person, since the latter would thereby be informed of the factual and legal reasons for the arrest and the possibilities for challenging the arrest warrant in application of Article 5(2) and (4) ECHR.

24 Under those circumstances, the referring court raises the question set out above, namely whether – if it were to make no effort, when issuing the European arrest warrant, to inform the requested person, while he or she is in the territory of the executing State, of the factual and legal reasons for the arrest and of the possibilities for challenging the arrest warrant – that omission would be in conformity with Article 6 of the Charter, if that provision is to be understood as the ECtHR understands Article 5(1)(c) ECHR.

– Application of Article 47(1) of the Charter

25 The question arises as to whether the requirement of an ‘effective remedy’ under Article 47 of the Charter would be met if the issuing judicial authority made no effort whatsoever to inform the requested person of his or her rights as a person in respect of whom an arrest warrant has been issued (that is to say, to inform him or her of the factual and legal reasons for his or her arrest and of any possibilities for challenging it) while that person is in the territory of another State and is the subject of a European arrest warrant [and] is possibly arrested there.

26 The answer to this question undoubtedly depends on whether the accused person has a legal interest under Article 47(1) of the Charter in being informed and being able to challenge the national arrest warrant while in the territory of another State, especially if he or she is possibly arrested there, [and] more specifically, whether such a challenge can be favourable to him or her, especially in the context of the ongoing procedure for the execution of the European arrest warrant.

27 It can be concluded from the judgments of the ECtHR cited above that the requested person must have all the rights that he or she would have had if arrested on national territory. In particular, that person must have the right under Article 5(2) ECHR to be informed of the factual and legal circumstances of his or her arrest and the right under Article 5(4) ECHR to challenge the lawfulness of the arrest. The requested person would [then] be able to challenge the arrest before the issuing authority and thus protect his or her interests against the executing authority that actually arrested him or her.

28 The question arises as to an effective remedy within the scope of application of EU law, namely a remedy to provide protection against the execution of the European arrest warrant in the executing State, and also against the arrest in the executing State. More precisely, that remedy would consist of the possibility to challenge the national arrest warrant on the basis of which the European arrest warrant was issued, which, in turn, would form the basis for a possible arrest in the executing State. It must not be forgotten that it is precisely that national arrest warrant that forms the basis for the two subsequent steps.

- 29 The question as to an effective remedy under Article 47(1) of the Charter arises, in particular, in the context of an ongoing procedure for the execution of a European arrest warrant. In such a case, the ability to challenge the lawfulness of the national arrest warrant when the requested person is still in the territory of the executing State constitutes a form of protection against the European arrest warrant issued on the basis of the national decision. Such a challenge also constitutes a form of protection against the arrest of the requested person in the course of the execution of the European arrest warrant in the executing State. More specifically, the requested person can protect himself or herself not only by challenging the arrest pursuant to Article 12 of Framework Decision 2002/584, but also by challenging the national arrest warrant, which forms the basis of the entire procedure for executing the European arrest warrant.
- 30 In its judgment in Case C-649/19, the Court of Justice held that the right to effective judicial protection under Article 47 of the Charter does not require that the requested person be able to challenge his or her detention before the issuing authority prior to his or her surrender (paragraph 79); therefore, that person need not be informed accordingly before his or her surrender in order to enable such a challenge (paragraph 80). Consequently, only the judicial protection that is afforded after the surrender of the person is effective.
- 31 The question arises as to the existence of effective remedies in cases where there is an international element, namely where a judicial authority issues a national arrest warrant and subsequently issues, on the basis of that warrant, a European arrest warrant, and then another national judicial authority arrests the requested person in execution of the European arrest warrant. In such a case, the ability to challenge the national arrest warrant (which forms the basis of the entire procedure) constitutes a remedy providing protection against the execution of the European arrest warrant.
- 32 Were the requested person to be provided with a remedy for such a challenge only after the surrender, that is to say after the procedure for the execution of the European arrest warrant has been concluded, that remedy could establish only the unlawfulness of the national arrest warrant and, on that basis, the unlawfulness of the European arrest warrant and, in turn on that basis, the unlawfulness of the arrest in the executing State, but it cannot rectify those instances of unlawfulness. They would be established *post factum*, as the harmful effects would have already occurred. Such a remedy would not be capable of establishing such instances of unlawfulness in good time in order to limit them to the absolute minimum. Such a remedy is not in fact effective.
- 33 Effective legal protection is that which is provided in good time – when the person concerned needs it. The requested person needs legal remedies as soon as a national arrest warrant has been issued in respect of him or her in the main proceedings, and even more so if it has been executed by virtue of his or her arrest in the executing State.

- 34 It cannot be assumed that Framework Decision 2002/584 precludes the possibility to inform the requested person of the national arrest warrant. The amendment of that framework decision by Framework Decision 2009/299 ensures that legal protection with regard to the provision of information, which applies even if the requested person has not been arrested. However, that legal protection applies only to the provision of information about the decision on the merits where a European arrest warrant is issued for the purpose of executing a custodial sentence following a conviction in absentia – Article 4a(2) of Framework Decision 2009/299; in such cases, the requested person must always be informed of his or her conviction. What is common to the two European arrest warrant scenarios – that in which the arrest warrant is issued for the purposes of prosecution and that in which it is issued to execute a custodial sentence – is the arrest of the requested person in execution of the national arrest warrant, which takes place immediately after the surrender. For that reason, the guarantees of effective remedies available prior to that surrender should be similar. Moreover, it is precisely in the case of a European arrest warrant for the purposes of prosecution that it is even more necessary for the person concerned to be informed before surrender.
- 35 Recital 46 and Article 10(4) to (6) of Directive 2013/48 and recital 21 and Article 5(2) of Directive 2016/1919 proceed on a similar basis. Those provisions concern the assistance provided to the requested person by a lawyer in the issuing Member State who assists the lawyer in the executing Member State by providing the latter with information and advice with a view to the effective exercise of the rights of the requested person before the executing authority. Consequently, while still in the executing State, the requested person has a recognised right to be informed – through his or her lawyer – of the elements of the main proceedings on the basis of which the European arrest warrant was issued. The most important [of those elements] is undoubtedly the national arrest warrant (that is to say, the factual and legal reasons for the arrest).
- 36 Next, it is necessary to draw a comparison with the legal regime for the European Investigation Order under Directive 2014/41 (OJ 2014 L 130, p. 1). In particular, under Article 14 of that directive, the person concerned has a recognised right to challenge the investigation order before the issuing authority – and to do so before it is executed.
- 37 What the European arrest warrant and the European Investigation Order have in common is that the legal rights of a specific person who is in the territory of one State are thereby encroached upon by the authorities of that State but at the request of the authorities of another State. The difference undoubtedly resides in the fact that the encroachment in the case of a European arrest warrant is many times more significant than that in the case of the application of a European Investigation Order. There is also another difference, namely that Directive 2014/41 was adopted 12 years after Framework Decision 2002/584, with the result that newer, higher standards for the protection of fundamental rights are clearly laid down in it.

38 Therefore, it cannot be inferred from any provision of EU law directly or indirectly relating to the status of a person sought or arrested on the basis of a European arrest warrant that the requested person – especially if arrested in the executing State – has no legal interest in being informed by the issuing authority of the factual and legal reasons for the arrest and of the possibilities for challenging the arrest warrant.

– Third level of protection

39 The Court of Justice has held that the issuance of a European arrest warrant entails a dual level of judicial protection (judgment of the Court of Justice, C-508/18 and C-82/19, EU:C:2019:456, paragraphs 67 and 68). The first level exists when the national arrest warrant is issued and the second when the European arrest warrant is issued. What the two levels of protection have in common is the lack of involvement of the accused person. He or she is not given any opportunity to express his or her opinion.

40 In order to achieve genuinely effective protection, it is necessary to recognise the need for a third level of protection existing after the first two levels, namely protection before the issuing authority in the course of the execution of the European arrest warrant while the requested person is in the executing State (to that effect, see Case C-452/16, *Poltorak*, EU:C:2016:858, paragraphs 39 and 44).

41 According to the Explanations relating to the Charter, the first paragraph of Article 47 thereof corresponds to Article 13 ECHR and grants even more extensive protection. It is emphasised that ‘in Union law the protection ... guarantees the right to an effective remedy before a court’. In fact, neither the first nor the second level of protection provide ‘an effective remedy before a court’. Those levels therefore fall short, in themselves, of the standard required by the first paragraph of Article 47 of the Charter. The very nature of judicial review requires a fair hearing and not a decision based solely on the charges brought by the prosecution. It should be recalled, once again, that those arguments concern the procedure before the issuing judicial authority, which must ensure an effective remedy until the person is surrendered.

– Proportionality

42 The Court of Justice has emphasised the importance of proportionality in the issuance of European arrest warrants (judgment in the *Kovalkovas* case, C-477/16, EU:C:2016:8611, paragraph 47). That proportionality cannot be adequately assessed if the viewpoint of the accused person, including any information indicating whether there has been an attempt to evade justice, is not taken into account.

43 Were the requested person to have an effective remedy for challenging the national arrest warrant while in the executing State, this would lead to a reduction in the number of disproportionate European arrest warrants or an increase in the

number of cases where such disproportionate European arrest warrants are withdrawn before the person is surrendered.

- 44 Since the courts regard themselves as the guardians of the fundamental rights of requested persons, the inevitable conclusion is that the requested person must be guaranteed an effective means of protecting those rights before a court, and, specifically, prior to his or her surrender. This means that they must be duly informed of the content of the national arrest warrant and of the legal possibilities for challenging it.
- 45 The present order for reference therefore raises the question as to whether Article 47 of the Charter also produces its effect during the period of execution of the European arrest warrant prior to the surrender of the requested person, with the result that it precludes a complete failure on the part of the issuing judicial authority to inform the requested person of the factual and legal reasons for his or her arrest and of the possibilities for challenging it.
- Right to move and reside freely under Article 3(2) TEU and Article 20(2)(a) and Article 21(1) TFEU
- 46 According to that right, every citizen of the Union – such as IR, who undoubtedly holds Bulgarian nationality – has the right to move and reside freely within the territory of the Member States. In accordance with the case-law of the Court of Justice, that right would be limited if a person is placed at a disadvantage simply because he or she has exercised his or her freedom to move. That principle is applicable even in the case of provisions of criminal law (judgment in Case C-454/19, EU:C:2020:947, paragraphs 27 and 30), and consequently also applies to rules of criminal procedure such as those relevant to the right to information in the main proceedings.
- 47 In the present case, if IR had not exercised that right and had been arrested on national territory, he would enjoy the full range of rights, namely he would receive a copy of the arrest warrant and thus access to the factual and legal reasons for that arrest, and he would be informed of the right to challenge the arrest warrant; if he were to exercise that right, the court would rule on the challenge within a short period of time.
- 48 However, solely by virtue of the fact that he has exercised his right to move and/or reside freely, he would not be able to exercise those rights, even though he would be formally entitled to them under national law. The reason for this is the absence of a procedure for duly informing the person concerned of the content of the national arrest warrant in the executing State and the resulting circumstance that the referring court refrains from providing such information.
- 49 It cannot be assumed that the situation of an accused person located in the national territory is substantially different from that of an accused person located in the territory of another Member State, with the result that a difference in treatment would be justified.

- 50 In reality, the executing judicial authority acts on behalf of the issuing judicial authority for the purposes of arresting and surrendering the accused person. If the issuing judicial authority is able to instruct the executing judicial authority to take certain actions against the accused person that violate his or her rights – namely arresting and surrendering him – it also has the possibility to instruct it to provide him or her with the relevant items of information directly related to the arrest and surrender.
- 51 In accordance with the case-law of the Court of Justice, a restriction on freedom of movement is justified if it is based on objective considerations of public interest and is proportionate to a legitimate objective. In the present case, the only justification for such a difference in treatment resides in the fact that EU law, specifically Directive 2012/13, does not provide for the possibility for the court issuing an arrest warrant to inform the accused person of that decision in good time, including the possibility to challenge it, in the case where the arrest takes place in the territory of another Member State on the basis of a European arrest warrant. According to the judgment in Case C-649/19, the provision of such information is mandatory only after the person has been surrendered.
- 52 The question arises as to whether the absence of an express reference to the provision of such information in Framework Decision 2002/584 or the difficulties in providing such information in practice constitutes sufficient justification for the difference in treatment based on the fact that the right to free movement has been exercised.
- 53 Recourse could be had to the possibility to ‘forward information’ (Article 15(3) and third sentence of recital 5 of Framework Decision 2002/584). In that context, it would not be possible to assess as being contrary to the system of the Framework Decision either the forwarding by the issuing authority to the executing authority of certain information (copy of the national arrest warrant, which likewise informs the requested person of the factual and legal reasons for the arrest and the possibilities for challenging the arrest warrant) which the executing authority provides to the requested person if the latter has been arrested or – in the event that, as a result of that information, the requested person has challenged the arrest warrant and the latter has been withdrawn – the forwarding of a notification from the issuing authority to the executing authority that the European arrest warrant has been withdrawn.
- Principle of equal treatment
- 54 The question arises as to whether the principle of equal treatment precludes the issuing authority from deciding to completely refrain from informing the requested person, while he or she is in another Member State, of the factual and legal reasons for the arrest and of the possibility to seek the withdrawal of the arrest warrant.

55 The question arises as to whether there is an infringement of the principle of equal treatment if the accused person does not enjoy the same level of protection within the scope of application of EU law as he or she would enjoy in a domestic situation, and, more specifically, whether the issuing judicial authority must ensure the level of protection which the accused person would enjoy if he or she were in national territory, or must at least make a certain amount of effort to ensure it.

– Principle of mutual trust

56 The Court of Justice has already stated that the principle of mutual recognition, one manifestation of which is the European arrest warrant, is founded on the principle of mutual trust, in particular the trust that the requested person enjoys the issuing State's right to adequate remedies.

57 In the present case, that trust could be compromised precisely in the individual development of the procedure. Thus, if the requested person raises objections before the executing judicial authority to the lawfulness of the national arrest warrant on the basis of which the European arrest warrant was issued, the executing judicial authority will be unable to rule on them. Only the issuing judicial authority will be able to rule on them, and to do so within a reasonable period of time so that the decision does not become meaningless.

58 In the absence of an adequate opportunity for the requested person to raise his or her objections before the issuing authority, the executing authority would be faced with the dilemma of whether to execute a European arrest warrant in respect of which – even if the grounds for issuing it may have existed in the past – it is not certain whether they still exist in the light of the objections raised by the requested person, which have not received a response from the issuing judicial authority and will not receive one until the person is surrendered.

59 This can only be detrimental to the mechanism established by Framework Decision 2002/584, as the executing authority would be forced to execute a European arrest warrant in respect of which it is not certain whether the fundamental rights of the requested person have actually been respected in the issuing State.

Second question referred

60 National law requires that the accused person be informed (by being served a copy of the national arrest warrant) of the factual and legal reasons for his or her arrest and of the possibility to challenge the arrest warrant. That requirement is not waived for example because the accused was arrested in foreign territory, and it is respected when organising the extradition, because the national arrest warrant forms part of the case materials. However, if a European arrest warrant is issued, the requested person has no possibility of being provided with that information, as Framework Decision 2002/584 does not provide for a procedure for the issuing judicial authority to inform the requested person, including information regarding

the reasons for the arrest and the possibilities to challenge the arrest warrant. At the same time, the last sentence of recital 12 states that each Member State is not prevented from applying its rules relating to due process.

- 61 As is apparent from the Court of Justice’s judgment in Case C-649/19, Directive 2012/13 is not to be interpreted as obliging the issuing judicial authority to inform the requested person of the national arrest warrant and the possibilities for challenging it. Rather, the directive sets minimum rules and does not affect the information that can be provided under national law. In so doing, Member States may extend the rights set out in the directive in order to provide a higher level of protection; the application of the directive does not result in the annulment of the rights available to the accused person under national law where they provide a higher level of protection.
- 62 At first glance, therefore, the fact that neither the framework decision nor the directive provides for an obligation on the part of the issuing authority to provide an accused person in respect of whom a European arrest warrant has been issued and who has been located or even arrested in another Member State with the necessary items of information does not release the issuing authority from its obligations under national law to provide that information and to take a decision on the accused person’s request for the withdrawal of the arrest warrant.
- 63 At the same time, on closer examination, it might be assumed that EU law requires that such information not be provided and that no decision be taken on any request for the withdrawal of the arrest warrant. Those acts would have to be carried out only after the person has been surrendered on national territory. [References and analysis of the judgment of the Court of Justice of 28 January 2021, *IR*, C-649/19, EU:C:2021:75, and other judgments of the Court of Justice].
- 64 In accordance with the case-law of the Court of Justice, the purpose of the information contained in the European arrest warrant 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 (C-367/16, *Piotrowski*, EU:C:2018:27, paragraph 59). At the same time, it is clear that the act of informing the requested person of the content of the national arrest warrant (that is to say, the factual and legal reasons for the arrest and the possibilities to challenge the arrest warrant) does not have any bearing on the executing authority’s decision on the surrender of the requested person. Therefore, the possibility to forward information as provided for in Article 15(2) of Framework Decision 2002/584 is not applicable, because the use of that possibility remains a measure of last resort that is envisaged only for exceptional cases in which the executing judicial authority finds that it does not have all the official information required to enable it to adopt its decision on the surrender as a matter of urgency.
- 65 The EU legislature, which formulated Framework Decision 2002/584 and Directive 2012/13, therefore made a conscious choice, which has been repeatedly

affirmed by the Court of Justice, which interprets [those legal acts] in the light of, inter alia, the fundamental principles of EU law that it established itself. According to that choice, the accused person in respect of whom a European arrest warrant has been issued and who may be arrested on the basis thereof may not exercise his or her rights under national law until he or she is surrendered to the issuing state. Therefore, a national rule which makes no distinction in that regard and grants those rights to an accused person even if a European arrest warrant has been issued in respect of him or her, and even if he or she has been arrested on the basis of that arrest warrant, is contrary to EU law.

- 66 This gives rise to the second question referred, namely whether, having regard to the primacy of EU law over national law, the latter must be interpreted restrictively and narrowly to the effect that the rights conferred on the accused person by national law (to be informed of the factual and legal reasons for the arrest and of the possibilities to challenge the arrest warrant) and the corresponding obligations of the court to provide him or her with that information do not apply and are to be disapplied in relation to an accused person in respect of whom a European arrest warrant has been issued, and who may be arrested on the basis of that arrest warrant, until he or she is surrendered to the national territory.
- 67 More specifically, and transferred to the facts in the main proceedings: is it permissible for the referring court, when issuing a European arrest warrant, or subsequently when it becomes aware of the arrest of IR in the territory of another Member State, not to take any steps to inform him of the rights that he has as a person subject to a national arrest warrant in the course of the execution of which he was arrested by way of that European arrest warrant, even if it would be easy for the court to do so – for example, in response to a request under Article 15(2) of Framework Decision 2002/584?
- 68 It raises doubts as to whether national legislation which makes no distinction according to whether the national arrest warrant was executed by arresting the accused person on national territory or on the territory of another Member State, in that it provides that person with the same remedy for the protection of his or her rights, namely a decision on the merits as to whether to withdraw the arrest warrant, is contrary to EU law. The second part of the second question referred is therefore asked, namely whether, following a request by IR for the withdrawal of the arrest warrant, the referring court may refrain from examining his request immediately and decide on it only after he has been surrendered in the course of the execution of the European arrest warrant.

Third question referred

- 69 This question remains relevant irrespective of whether it follows from the answer to the first question that EU law requires that the accused person be informed of his or her rights or whether it follows from the answer to the second question that EU law does not preclude such provision of information. In both cases, the referring court would have to make certain efforts to inform the requested person

of the arrest warrant (that is to say, of the factual and legal reasons for the arrest and the possibilities to challenge the arrest warrant).

- 70 Since the requested person is wanted under a European arrest warrant, the question arises as to whether such provision of information must take place by means of relevant details in that arrest warrant. However, this is contrary to Article 8 of Framework Decision 2002/584 and its accompanying form, and is also contrary to the fundamental idea behind the framework decision, as it would lead to an excessive expansion of the content of the European arrest warrant. On the other hand, owing to the obligation of the executing authority to provide the requested person with that arrest warrant (Article 11(1) of Framework Decision 2002/584), such provision of information appears to be effective.
- 71 Another possibility is to include in the European arrest warrant a request for the executing judicial authority to inform the issuing judicial authority of when the requested person is found, and to do so as soon as the procedure for executing the European arrest warrant is initiated, or of when the requested person is arrested. The requesting authority can then take the necessary steps to inform that person accordingly. In that respect, such a request is clearly outside the scope of Framework Decision 2002/584 and there is no legal basis for complying with it.
- 72 The Court of Justice, which has the best knowledge of EU law, is undoubtedly best placed to provide a useful answer as to when and how the provision of information should take place and also which provisions of EU law should be applied when the cooperation of the executing judicial authority is required.