

Anonymised version

Translation

C-583/23 – 1

Case C-583/23 [Delda] ⁱ

Request for a preliminary ruling

Date lodged:

22 September 2023

Referring court:

Cour de cassation – Chambre criminelle (France)

Date of the decision to refer:

19 September 2023

Appellant:

AK

Respondent:

Ministère public

[...]

[...]

19 SEPTEMBER 2023

[...]

[...]

JUDGMENT OF THE COUR DE CASSATION, CHAMBRE CRIMINELLE
(COURT OF CASSATION, CRIMINAL CHAMBER),

OF 19 SEPTEMBER 2023

AK has brought an appeal against the judgment of the Chambre de l'instruction (Indictment Division) of the Cour d'appel de Paris (Court of Appeal, Paris), [...],

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

dated 20 April 2022, which, in the course of proceedings seeking the execution of a European Investigation Order issued by the Spanish authorities, ruled on her application for procedural documents to be declared invalid.

[...]

The Criminal Chamber of the Court of Cassation [...] has delivered the following judgment.

Facts and procedure

- 1 The following facts are apparent from the judgment under appeal and the procedural documents.
- 2 On 1 March 2021, the Spanish judicial authorities issued a European Investigation Order addressed to the French authorities, requesting them to serve on AK, who was serving a custodial sentence in France, an indictment issued on 30 September 2009 by the Central Court of Preliminary Investigation in Madrid so that she could ‘state her case as to the matters in question’ in the presence of her lawyer.
- 3 On 19 July 2021, the investigating judge served AK with the indictment, in the presence of her lawyer, gave her and her lawyer a copy of that decision in Spanish and took statements from her, all of which was minuted in the official records.
- 4 On 20 July 2021, AK lodged an application with the Indictment Division for that hearing to be declared invalid.

Analysis of the ground of appeal

The first part of the ground of appeal

Wording of the ground of appeal

- 5 The ground of appeal criticises the judgment under appeal for stating that there was no cause for declaring invalid the official record of a judicial hearing dated 19 July 2021 enforcing a request for international assistance in a criminal matter. It is worded as follows:

‘1) it is not possible to use a European Investigation Order to seek the service of an indictment incorporating an order for the accused person to be remanded in custody pending trial and to lodge a bail payment within 24 hours of service or else face having their assets seized up to the equivalent value, as this does not constitute the carrying-out of investigations to obtain evidence relating to a criminal offence; this is the case even where the authorities of the issuing State also require the person to make observations on the matters referred to in the indictment served; in finding to the contrary, the Indictment Division infringed

Article 1 of Directive 2014/41/EU and Article 694-16 of the Code de procédure pénale (Code of Criminal Procedure).’

The Court’s response

- 6 In dismissing the plea that the request made by the Spanish authorities was invalid since it did not fall within the scope of European Investigation Orders as defined in Article 694-16 of the Code of Criminal Procedure, the judgment under appeal found that the Spanish authorities requested not only that the indictment be served on AK, but also that AK should be able to ‘state her case as to the matters in question’.
- 7 The Court further notes, first, that the section headed ‘Grounds for issuing the European Investigation Order’ states that the measures requested are ‘to verify whether offences have been committed and all the circumstances that may affect the classification and the guilt of offenders’, second, that, even though they did not tick the box next to ‘Hearing [of] suspected or accused person’ on the relevant form, the Spanish authorities were clearly asking the French investigating judge to obtain and formally record statements from AK in relation to the offences which she is suspected of committing.
- 8 The Court concludes that, in requesting that AK explain her position regarding the facts, in the presence of her lawyer and in accordance with the rights of the defence, the Spanish authorities were asking for investigations to be carried out for the purpose of obtaining evidence relating to a criminal offence.
- 9 Under Article 1 of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, a European Investigation Order is a judicial decision which has been issued or validated by a judicial authority of a Member State (‘the issuing State’) to have one or several investigative measure(s) carried out in another Member State (‘the executing State’) to obtain evidence in accordance with the directive.
- 10 Article 3 of the directive provides that the European Investigation Order covers any investigative measure with the exception of setting up a joint investigation team and the gathering of evidence within such a team.
- 11 The aforementioned directive is transposed by Articles 694-15 et seq. of the Code of Criminal Procedure, Article 694-16 of which defines the European Investigation Order as a judicial decision issued by a Member State, known as the issuing State, requiring another Member State, known as the executing State, through the use of forms common to all Member States, to carry out investigations on its territory and within a certain timeframe in order to obtain evidence relating to a criminal offence or to communicate evidence already in its possession.
- 12 The appellant notes that under the European Investigation Order in question, the Spanish authorities asked for AK to be served with an indictment which incorporated an order to remand her in custody pending trial and a requirement for

her to make a bail payment of EUR 30 000 within 24 hours of service, failing which her assets could be seized up to that value. The Spanish authorities added that, following service, AK could ‘state her case as to the matters referred to in the indictment’ in the presence of her lawyer.

- 13 She submits that the purpose of issuing a European Investigation Order cannot be to ‘announce the criminal charges being brought and the referral of the matter to a court of law’, since communication of that information falls within the scope of other cooperation instruments and in particular Article 696-44 of the Code of Criminal Procedure.
- 14 However, the Avocat général près la Cour de cassation (Advocate General at the Court of Cassation) takes the view that the European Investigation Order, which, in this case, contains investigative measures which are inextricably linked to the service of the indictment on AK and to the gathering of her comments by a judge in the presence of a lawyer to ensure compliance with the rights of the defence, amounts to the carrying-out of investigations to obtain evidence relating to a criminal offence.
- 15 To date, the Court of Justice of the European Union has never ruled on the material scope of the European Investigation Order and specifically on whether or not it includes the service of an indictment which includes an incarceration order and an order to make a bail payment.
- 16 Since the correct application of EU law does not appear to be so obvious as to leave no room for reasonable doubt, the question below must be referred for a preliminary ruling.

ON THOSE GROUNDS, the Court:

REFERS the following question to the Court of Justice of the European Union:

Must Articles 1 and 3 of Directive 2014/41 be interpreted as allowing the judicial authorities of a Member State to issue or validate a European Investigation Order the purpose of which is, first, to serve on the person concerned an indictment, which also includes an incarceration order and an order to make a bail payment and, second, to hear that person so that he or she may, in the presence of his or her lawyer, make any relevant observations on the matters set out in the indictment?

[...]