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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

28 January 2021 (*)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2012/13/EU – Articles 4 to 7 – Letters of Rights set out in Annexes I and II – Framework Decision 2002/584/JHA – Right to information in criminal proceedings – Letter of Rights on arrest – Right to be informed of the accusation – Right of access to the materials of the case – Person arrested on the basis of a European arrest warrant in the executing Member State)

In Case C-649/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 20 August 2019, received at the Court on 3 September 2019, in the criminal proceedings against

IR,

interested party:

Spetsializirana prokuratura,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, M. Ilešič, E. Juhász, C. Lycourgos (Rapporteur) and I. Jarukaitis, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Czech Government, by M. Smolek, J. Vláčil and T. Machovičová, acting as Agents,
- the German Government, by J. Möller, M. Hellmann and E. Lankenau, acting as Agents,
- the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,
- the Austrian Government, by J. Schmoll, acting as Agent,
- the European Commission, initially by S. Grünheid, Y.G. Marinova and R. Troosters, and subsequently by S. Grünheid and Y.G. Marinova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 September 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns (i) the interpretation of Articles 6 and 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’), Article 4, Article 6(2) and Article 7(1) 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), Article 1(3) and Article 8 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’), and the form set out in the annex thereto, and (ii) the validity of that framework decision.

2 The request has been made in criminal proceedings brought against IR in respect of offences linked to cigarette trafficking.

Legal context

European Union law

Framework Decision 2002/584

3 Recitals 5, 6 and 12 of Framework Decision 2002/584 state:

‘(5) ... 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. ...

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the “cornerstone” of judicial cooperation.

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [TEU] and reflected in [the Charter], in particular [Title] VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.'

4 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].'

5 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 e-mail 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 that it will accept a translation in one or more other official languages of the Institutions of the European Communities.’

6 The annex to Framework Decision 2002/584 sets out a form detailing the information that must be included in a European arrest warrant.

Directive 2012/13

7 Recitals 3, 11, 14, 21, 27, 28 and 39 of Directive 2012/13 state:

‘(3) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other’s criminal justice systems. The extent of mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.

...

(11) On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings [(OJ 2009 C 295, p. 1)] (hereinafter “the Roadmap”). ...

...

(14) This Directive relates to measure B of the Roadmap. It 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. This Directive 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 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (“ECHR”),] as interpreted by the European Court of Human Rights. In this Directive, the term “accusation” is used to describe the same concept as the term “charge” used in Article 6(1) ECHR.

...

(21) References in this Directive to suspects or accused persons who are arrested or detained should be understood to refer to any situation where, in the course of criminal proceedings, suspects or accused persons are deprived of liberty within the meaning of Article 5(1)(c) ECHR, as interpreted by the case-law of the European Court of Human Rights.

...

(27) Persons accused of having committed a criminal offence should be given all the information on the accusation necessary to enable them to prepare their defence and to safeguard the fairness of the proceedings.

(28) The information provided to suspects or accused persons about the criminal act they are suspected or accused of having committed should be given promptly, and at the latest before their first official interview by the police or another competent authority, and without prejudicing the course of ongoing investigations. A description of the facts, including, where known, time and

place, relating to the criminal act that the persons are suspected or accused of having committed and the possible legal classification of the alleged offence should be given in sufficient detail, taking into account the stage of the criminal proceedings when such a description is given, to safeguard the fairness of the proceedings and allow for an effective exercise of the rights of the defence.

...

(39) The right to written information about rights on arrest provided for in this Directive should also apply, *mutatis mutandis*, to persons arrested for the purpose of the execution of a European Arrest Warrant under [Framework Decision 2002/584]. To help Member States draw up a Letter of Rights for such persons, a model is provided in Annex II. That model is indicative and may be subject to review in the context of the Commission's report on implementation of this Directive and also once all the Roadmap measures have come into force.'

8 Article 1 of that directive provides:

'This Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.'

9 Article 3 of that directive provides:

'1. Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

- (a) the right of access to a lawyer;
- (b) any entitlement to free legal advice and the conditions for obtaining such advice;
- (c) the right to be informed of the accusation, in accordance with Article 6;
- (d) the right to interpretation and translation;
- (e) the right to remain silent.

2. Member States shall ensure that the information provided for under paragraph 1 shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.'

10 Article 4 of that directive provides:

'1. Member States shall ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty.

2. In addition to the information set out in Article 3, the Letter of Rights referred to in paragraph 1 of this Article shall contain information about the following rights as they apply under national law:

- (a) the right of access to the materials of the case;
- (b) the right to have consular authorities and one person informed;
- (c) the right of access to urgent medical assistance; and
- (d) the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.

3. The Letter of Rights shall also contain basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

4. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex I.

5. Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them without undue delay.'

11 Article 5 of Directive 2012/13 provides:

'1. Member States shall ensure that persons who are arrested for the purpose of the execution of a European Arrest Warrant are provided promptly with an appropriate Letter of Rights containing information on their rights according to the law implementing [Framework Decision 2002/584] in the executing Member State.

2. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex II.'

12 Under Article 6 of that directive:

'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.

4. Member States shall ensure that suspects or accused persons are informed promptly of any changes in the information given in accordance with this Article where this is necessary to safeguard the fairness of the proceedings.'

13 Article 7 of that directive provides:

- ‘1. Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.
2. Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.
3. Without prejudice to paragraph 1, access to the materials referred to in paragraph 2 shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.
4. By way of derogation from paragraphs 2 and 3, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted. Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this paragraph is taken by a judicial authority or is at least subject to judicial review.
5. Access, as referred to in this Article, shall be provided free of charge.’

14 Annex I to Directive 2012/13 sets out an indicative model Letter of Rights. That annex states that ‘the sole purpose of this model is to assist national authorities in drawing up their Letter of Rights at national level. Member States are not bound to use this model. When preparing their Letter of Rights, Member States may amend this model in order to align it with their national rules and add further useful information. The Member State’s Letter of Rights must be given upon arrest or detention. This however does not prevent Member States from providing suspects or accused persons with written information in other situations during criminal proceedings.’

15 That model contains eight information sections.

16 Annex II to Directive 2012/13 sets out an indicative model Letter of Rights for persons arrested on the basis of a European Arrest Warrant. That annex states that ‘the sole purpose of this model is to assist national authorities in drawing up their Letter of Rights at national level. Member States are not bound to use this model. When preparing their Letter of Rights, Member States may amend this model in order to align it with their national rules and add further useful information.’

17 That model contains five information sections.

Bulgarian law

18 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.

19 Neither the second sentence of Article 65(3) of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure; ‘the NPK’) nor Article 269(3)(4)(b) thereof precludes the use of remedies when the person is arrested in the executing Member State.

20 Article 55 of the NPK and Articles 72 to 74 of the Zakon za Ministerstvoto na vatreshnite raboti (Law on the Ministry of the Interior; ‘the ZMVR’) 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. According to Article 72(4) of the ZMVR and 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 him 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

21 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. During the pre-trial stage of the criminal proceedings against him, when he was represented by two lawyers chosen by him, IR was informed of only some of his rights as an accused person.

22 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. The two lawyers who had represented him during the pre-trial stage of the criminal proceedings declared that they no longer represented him. The court appointed a new lawyer to represent him.

23 By order of 10 April 2017, upheld on appeal on 19 April 2017, the referring court adopted a pre-trial detention measure in respect of IR; this measure constituted a national arrest warrant. IR did not take part in the proceedings and was defended by the court-appointed lawyer.

24 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.

25 The referring court, being uncertain whether the European arrest warrant that it had issued in respect of IR was compatible with EU law, on the ground that that person had not been made aware of certain rights he could claim under Bulgarian law, decided to annul that arrest warrant.

26 It emphasises that, since it has decided to issue a new European arrest warrant in respect of IR, it seeks clarification as regards the information to be attached to that warrant, in order to ensure observance of the rights conferred by Directive 2012/13.

27 In the first place, the referring court considers that it is not clear from the provisions of that directive whether Article 4, Article 6(2) and Article 7(1) thereof apply to a person who has been arrested on the territory of another Member State on the basis of a European arrest warrant.

28 According to that court, it is necessary to ascertain whether persons who are arrested on the basis of a European arrest warrant can rely not only on the rights expressly referred to in Article 5 of Directive 2012/13 and Annex II thereto, but also on those referred to in Article 4 of that directive and Annex I thereto. That question arises also as regards the rights referred to in Article 6(2) and Article 7(1) of that directive, since, in that court's view, it is unclear whether the person who is the subject of a European arrest warrant can rely on those rights in the Member State executing that warrant.

29 In the second place, should it be necessary to consider that the person arrested in the executing Member State on the basis of a European arrest warrant must have all the rights which he or she would have enjoyed if he or she had been arrested on the territory of the issuing Member State, the referring court asks whether Article 8 of Framework Decision 2002/584 must be interpreted as meaning that the content of the European arrest warrant could be amended in order to enable reference to be made, in accordance with Article 4(3) of Directive 2012/13, to the remedies available against the arrest warrants issued by that court.

30 In the third place, should it be necessary to consider that the information included in the form set out in the annex to Framework Decision 2002/584 cannot be supplemented, the referring court asks whether there are other means of guaranteeing the genuine and effective exercise of the rights which IR enjoys under Directive 2012/13, immediately after his arrest in another Member State on the basis of a European arrest warrant. One of those means could consist in informing that person of his rights pursuant to Article 4(3) of that directive and the reasons for his arrest under Article 6(2) thereof, as well as his right of access to documents pursuant to Article 7(1) of that directive. That could lead the referring court which issued the European arrest warrant to send that person, after becoming aware of his arrest, the Letter of Rights in the event of arrest, a copy of the national arrest warrant and the related evidence, the contact details of his representative and, if he so requests, a copy of the other materials of the case concerning him.

31 In the fourth place, should it be considered that it is possible for the court issuing a European arrest warrant either to complete the text of that warrant by adding information relating to the rights of the arrested person, or to inform the arrested person of his or her rights after his or her arrest, without however being under an obligation to do so, the referring court then questions the validity of Framework Decision 2002/584, which, in its view, does not guarantee the genuine exercise of the rights which the arrested person should enjoy under Directive 2012/13 and Articles 6 and 47 of the Charter.

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

‘(1) Do the rights of an accused person under Article 4 (in particular the right under Article 4(3)), Article 6(2) and Article 7(1) of Directive 2012/13 apply to an accused person who has been arrested on the basis of a European arrest warrant?

(2) If the first question is answered in the affirmative: Is Article 8 of Framework Decision 2002/584 to be interpreted as meaning that it allows the content of a European arrest warrant to be amended with regard to the form specified in the annex, in particular the insertion of new text into

that form, in relation to the rights of the requested person against the judicial authorities of the issuing Member State to challenge the validity of the national arrest warrant and of the European arrest warrant?

(3) If the second question is answered in the negative: Is it compatible with recital 12 and Article 1(3) of Framework Decision 2002/584, [Article 4, Article 6(2) and Article 7(1)] of [Directive 2012/13], and Articles 6 and 47 of the Charter if a European arrest warrant is issued in strict compliance with the form set out in the annex (that is to say without informing the requested person about his rights against the issuing judicial authority) and the issuing judicial authority informs him about the rights to which he is entitled and sends him the relevant documents immediately after that authority becomes aware of the arrest?

(4) If there are no other legal means for safeguarding the rights of a person arrested on the basis of a European arrest warrant under Article 4 [(in particular the right under Article 4(3))], Article 6(2) and Article 7(1) of [Directive 2012/13], is Framework Decision 2002/584 valid?

Admissibility of the request for a preliminary ruling

33 The German Government expresses doubts as to the admissibility of the request for a preliminary ruling, on the ground that there is no case pending before the referring court, as the European arrest warrant in respect of IR has been annulled. That government thus takes the view that the questions referred are hypothetical and, moreover, are relevant only in the event of a new European arrest warrant being issued, should IR no longer be in Bulgaria.

34 In that regard, it should be borne in mind that, according to the settled case-law of the Court, a national court may refer a question to the Court of Justice only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (judgments of 31 May 2005, *Syfait and Others*, C-53/03, EU:C:2005:333, paragraph 29, and of 16 September 2020, *Anesco and Others*, C-462/19, EU:C:2020:715, paragraph 36).

35 In the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (judgment of 17 October 2019, *Elektrorazpredelenie Yug*, C-31/18, EU:C:2019:868, paragraph 31 and the case-law cited).

36 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law or the assessment of the validity of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 16 October 2019, *Winterhoff and Eisenbeis*, C-4/18 and C-5/18, EU:C:2019:860, paragraph 36 and the case-law cited).

37 In the present case, the current nature of the dispute and the judicial nature of the proceedings are not in doubt, since the Specialised Public Prosecutor's Office has brought criminal proceedings, which are still ongoing, against IR, who is accused of having participated in a criminal organisation for the purpose of committing tax offences and for whom the court has appointed a lawyer.

38 It is also important to note that, according to the referring court, it has brought the matter before the Court with a view to adopting, depending on the answers provided to the questions referred, a new European arrest warrant in respect of IR. That being said, it cannot be accepted that the questions submitted bear no relation to the actual facts or the purpose of the proceedings pending before the referring court, or that the problem is hypothetical.

39 Furthermore, the issuing of a European arrest warrant could result in the arrest of the requested person and, therefore, affects the personal freedom of that person. The Court has held that, with regard to proceedings relating to such a warrant, observance of fundamental rights falls primarily within the responsibility of the issuing Member State. In order to ensure observance of those rights – 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 (see, to that effect, judgment of 25 July 2018, *AY (Arrest warrant – Witness)*, C-268/17, EU:C:2018:602, paragraphs 28 and 29).

40 The request for a preliminary ruling is therefore admissible.

Consideration of the questions referred

The first question

41 By its first question, the referring court asks whether Article 4 (in particular Article 4(3)), Article 6(2) and Article 7(1) of Directive 2012/13 must be interpreted as meaning that the rights referred to therein apply to persons who are arrested for the purposes of the execution of a European arrest warrant.

42 In accordance with settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, inter alia, judgments of 4 May 2010, *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 44, and of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraph 61).

43 In that respect, as regards the wording of the provisions at issue, Article 4(1) of Directive 2012/13 provides that Member States must ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. Article 4(3) of that directive states that that Letter of Rights is also to contain basic information about any possibility, under national law, of challenging the lawfulness of the arrest, obtaining a review of the detention, or making a request for provisional release.

44 Article 6(2) of that directive also refers to suspects or accused persons who are arrested or detained. That provision states that Member States must ensure that those persons are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed.

45 Article 7(1) of Directive 2012/13, which provides that, where a person is arrested and detained at any stage of the criminal proceedings, Member States are to ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers, also concerns those suspects and accused persons, as is apparent from a combined reading of Article 7(1) and (2) of that directive.

46 It must be pointed out that an analysis of the wording of the provisions at issue does not, in itself, enable it to be determined whether the persons who are arrested for the purposes of the execution of a European arrest warrant are included in the suspects or accused persons who are arrested or detained within the meaning of Directive 2012/13 and to whom the rights referred to in those provisions apply.

47 In those circumstances, it is necessary to interpret those provisions by taking into account their context and the objective of Directive 2012/13.

48 As regards the context of those provisions, it must be pointed out that Article 5 of Directive 2012/13 expressly concerns the rights of persons who are arrested for the purposes of the execution of a European arrest warrant. Under Article 5(1) of that directive, Member States are to ensure that those persons are provided promptly with an appropriate Letter of Rights containing information on their rights according to the law implementing Framework Decision 2002/584 in the executing Member State. According to Article 5(2) of that directive, an indicative model letter is set out in Annex II thereto.

49 That article must be read in the light of recital 39 of Directive 2012/13, which specifies that the right to written information about rights on arrest provided for in that directive should apply only *mutatis mutandis* to persons arrested for the purposes of the execution of a European arrest warrant; that recital refers, to that end, to the only indicative model set out in Annex II to that directive to help Member States draw up a Letter of Rights for such persons.

50 It must be noted that that indicative model is different from the one set out in Annex I to that directive and referred to in Article 4 thereof, which concerns the Letter of Rights to be provided to suspects and accused persons who are arrested or detained.

51 Even if, as the introductory part of Annexes I and II to Directive 2012/13 makes expressly clear, Member States can amend those two indicative models in order to align them with their national rules and to add further useful information, those models have only a single section in common, namely the one relating to the assistance of a lawyer. The other sections of those models relate, as can be seen from their title or their content, to the rights of either suspects or accused persons in the context of criminal proceedings, as regards Annex I to Directive 2012/13, or persons arrested on the basis of a European arrest warrant, as regards Annex II thereto.

52 It must be pointed out that, as the Advocate General noted in point 44 of his Opinion, no provision of Directive 2012/13 establishes that persons arrested on the basis of a European arrest warrant should receive a written letter combining the information contained in the two indicative models set out in Annexes I and II to that directive.

53 Furthermore, since the provisions in respect of which interpretation is sought by the referring court refer to suspects or accused persons who are arrested or detained, Article 5 of Directive 2012/13, read in the light of recital 39 thereof, suggests that those provisions do not concern persons who are arrested for the purposes of the execution of a European arrest warrant.

54 That conclusion is confirmed by recital 21 of that directive, according to which references in that directive to suspects or accused persons who are arrested or detained should be understood to refer to any situation where, in the course of criminal proceedings, suspects or accused persons are deprived of liberty within the meaning of Article 5(1)(c) ECHR, as interpreted by the case-law of the European Court of Human Rights.

55 As the Advocate General noted in point 47 of his Opinion, the latter provision concerns a situation involving the lawful arrest or detention of a person effected 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. Such a situation is different from that referred to in Article 5(1)(f) ECHR, namely 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. The latter situation corresponds to the mechanism of the European arrest warrant established by Framework Decision 2002/584.

56 An interpretation of Article 4, Article 6(2) and Article 7(1) of Directive 2012/13, in the light of the context of those provisions, to the effect that those provisions do not apply to persons who are arrested for the purposes of the execution of a European arrest warrant, is also confirmed by the objectives of that directive.

57 In that regard, it must be noted that Article 1 of Directive 2012/13, which sets out the subject matter of that directive, distinguishes between the rights of suspects and accused persons and the rights of persons subject to a European arrest warrant. Thus, that article provides that that directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. The article states that the directive also lays down rules concerning the right to information of persons subject to a European arrest warrant relating to their rights.

58 It is apparent from a joint reading of that article and recitals 14, 27 and 39 of Directive 2012/13 that the objective of that directive is to lay down minimum standards to be applied in the field of information to be given to persons suspected or accused of having committed a criminal offence, in order to enable them to prepare their defence and to safeguard the fairness of the proceedings, but that it also seeks to preserve the specific characteristics of the procedure relating to European arrest warrants.

59 Framework Decision 2002/584 on the European arrest warrant seeks, by the establishment of a simplified and more effective system, directly between the judicial authorities, 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 24 September 2020, *Generalbundesanwalt beim Bundesgerichtshof (Speciality rule)*, C-195/20 PPU, EU:C:2020:749, paragraph 32 and the case-law cited).

60 By stating, in Article 5 thereof, that persons who are arrested for the purposes of the execution of a European arrest warrant are to be provided promptly with an appropriate Letter of Rights containing information on their rights according to the law implementing Framework Decision 2002/584 in the executing Member State, Directive 2012/13 effectively contributes to that objective of simplifying and expediting proceedings.

61 Furthermore, as the Advocate General noted in point 44 of his Opinion, where the person who is the subject of a European arrest warrant issued for the purposes of criminal prosecution is surrendered to the authorities of the Member State that issued that warrant, he or she acquires the status of ‘accused person’ within the meaning of Directive 2012/13 and enjoys all the rights associated with that status, including those referred to in Article 4, 6 and 7 of that directive. That

person can thus prepare his or her defence and safeguard the fairness of the proceedings, in accordance with the objectives of that directive.

62 In the light of all the foregoing considerations, the answer to the first question is that Article 4 (in particular Article 4(3)), Article 6(2) and Article 7(1) of Directive 2012/13 must be interpreted as meaning that the rights referred to therein do not apply to persons who are arrested for the purposes of the execution of a European arrest warrant.

The second question

63 Since the second question was asked only in the event that the Court were to answer that Article 4, Article 6(2) and Article 7(1) of Directive 2012/13 must be interpreted as meaning that the rights referred to therein apply to persons who are arrested for the purposes of the execution of a European arrest warrant, there is no need, in the light of the answer given to the first question, to answer that second question.

The third and fourth questions

64 By its third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, the Court to rule on the validity of Framework Decision 2002/584 in the light of Directive 2012/13 and Articles 6 and 47 of the Charter, given that that framework decision provides that the information communicated to persons arrested for the purposes of the execution of a European arrest warrant is to be limited to the information referred to in Article 8(1) of that framework decision and included in the form set out in the annex to that decision and in the model in Annex II to that directive.

65 As a preliminary point, it should be borne in mind that the substantive legality of an EU act cannot be examined in the light of another EU act of the same status in the hierarchy of legal rules, unless the former has been adopted pursuant to the latter or unless it is expressly provided, in one of those two acts, that one take precedence over the other (judgment of 8 December 2020, *Hungary v Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 119).

66 In the present case, Framework Decision 2002/584 and Directive 2012/13 are both acts of secondary law and Framework Decision 2002/584 was not adopted pursuant to Directive 2012/13, which, furthermore, postdates that framework decision. Moreover, it is not expressly provided that one of those two acts is to take precedence over the other. Consequently, it is not appropriate to examine the validity of Framework Decision 2002/584 in the light of the provisions of Directive 2012/13.

67 By contrast, it is appropriate to examine the validity of that framework decision in the light of Articles 6 and 47 of the Charter.

68 The referring court questions, more specifically, whether, where the rights referred to in Article 4, Article 6(2) and Article 7(1) of Directive 2012/13 do not apply to persons arrested for the purposes of the execution of a European arrest warrant, it becomes impossible or excessively difficult for those persons to challenge the national and European arrest warrants issued against them.

69 In particular, it is apparent from paragraph 70 of the judgment 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), that the decision to issue a European arrest warrant must, in the issuing Member State, be subject to

review by a court which meets in full the requirements inherent in effective judicial protection. For the person concerned to be able to effectively exercise the rights conferred on him or her by Directive 2012/13, he or she must enjoy those rights not only after his or her surrender to the issuing judicial authorities but from the moment of his or her arrest in the executing Member State.

70 In that regard, it is important to note that, according to Article 1(3) of Framework Decision 2002/584, that framework decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU.

71 The European arrest warrant system introduced by that framework decision 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 10 November 2016, *Özçelik*, C-453/16 PPU, EU:C:2016:860, paragraph 23 and the case-law cited, and of 9 October 2019, *NJ (Public Prosecutor's Office, Vienna)*, C-489/19 PPU, EU:C:2019:849, paragraph 27).

72 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 (see, to that effect, 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 66, and of 9 October 2019, *NJ (Public Prosecutor's Office, Vienna)*, C-489/19 PPU, EU:C:2019:849, paragraph 33).

73 The Court has thus already considered that the European arrest warrant system entails a dual level of protection of procedural rights and fundamental rights which must be enjoyed by 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, which may occur, depending on the circumstances, shortly after the adoption of the national judicial decision (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 67; of 9 October 2019, *NJ (Public Prosecutor's Office, Vienna)*, C-489/19 PPU, EU:C:2019:849, paragraph 34; and of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraph 59).

74 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 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraph 60).

75 In particular, the second level of protection of the rights of the person concerned requires that the issuing judicial authority review observance of the conditions to be met when issuing a

European arrest warrant and examine objectively – taking into account all incriminatory and exculpatory evidence, without being exposed to the risk of being subject to external instructions, in particular from the executive – whether it is proportionate to issue that warrant (judgment of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraph 61 and the case-law cited).

76 It is important to add that, as the Advocate General notes in point 81 of his Opinion, Framework Decision 2002/584 forms part of a comprehensive system of safeguards relating to effective judicial protection provided for by other EU rules, including Directive 2012/13, adopted in the field of judicial cooperation in criminal matters, which contribute to helping a person who is the subject of a European arrest warrant to exercise his or her rights.

77 As has already been stated in paragraph 61 of the present judgment, the person who is the subject of a European arrest warrant issued for the purposes of criminal prosecution, acquires, from the moment of his or her surrender to the authorities of the Member State that issued that warrant, the status of ‘accused person’ within the meaning of Directive 2012/13 and therefore enjoys all the rights associated with that status referred to in Articles 4, 6 and 7 of that directive, so that he or she can prepare his or her defence and safeguard the fairness of the proceedings, in accordance with the objectives of that directive.

78 Furthermore, as regards the period preceding the surrender of the person who is the subject of a European arrest warrant to the competent judicial authorities of the issuing Member State, it must be noted, first, that Article 8(1)(d) and (e) of Framework Decision 2002/584 provides that the European arrest warrant must contain information concerning 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. As the Advocate General noted in point 79 of his Opinion, that information corresponds, in essence, to the information referred to in Article 6 of Directive 2012/13.

79 Second, the right to effective judicial protection 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 (see, to that effect, judgment of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)*, C-566/19 PPU and C-626/19 PPU, EU:C:2019:1077, paragraphs 69 to 71).

80 Therefore, 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.

81 It follows from the foregoing considerations that the examination of the third and fourth questions has revealed nothing that is capable of affecting the validity of Framework Decision 2002/584 in the light of Articles 6 and 47 of the Charter.

Costs

82 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Fifth Chamber) hereby rules:

1. Article 4 (in particular Article 4(3)), Article 6(2) and Article 7(1) 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 must be interpreted as meaning that the rights referred to therein do not apply to persons who are arrested for the purposes of the execution of a European arrest warrant.

2. The examination of the third and fourth questions referred for a preliminary ruling has revealed nothing that is capable of affecting the validity of 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, in the light of Articles 6 and 47 of the Charter of Fundamental Rights of the European Union.

[Signatures]

* Language of the case: Bulgarian.
