

# CJEU: Consequences of Invalid EAWs for Pre-Trial Detention in the Issuing State

Thomas Wahl

In [Case C-414/20 PPU \(“MM”\)](#), the CJEU had to rule on the consequences if a Member State issued a European Arrest Warrant (EAW) without prior judicial decision that orders the arrest of the requested person. In the case at issue, MM was prosecuted in Bulgaria for having participated in a criminal drug-trafficking organisation. The public prosecutor only took a decision that put MM under investigation; this only had the legal effect that MM was notified of the charges against him. Without a court order for pre-trial detention, the public prosecutor issued an EAW. MM was surrendered from Spain to Bulgaria. Possible deficits of the EAW were not examined by the Spanish authorities executing the EAW since MM consented to his surrender.

The referring criminal court in Bulgaria essentially asked about the consequences any possible shortcomings concerning the Bulgarian EAW might have on subsequent criminal proceedings in Bulgaria, in particular whether pre-trial detention in Bulgaria could be maintained.

In its [judgment of 13 January 2021](#), the CJEU first pointed out that an EAW must be based on a “[national] arrest warrant or any other enforceable judicial decision having the same effect” in accordance with Art. 8(1) lit c) FD EAW. According to the CJEU, this provision is to be understood in such a way that the EAW may only be based on such legal acts which are intended to enable the arrest of a person for the purpose of criminal proceedings. Measures that solely intend to notify the person concerned of the charges against him and to afford him the possibility to defend himself by providing explanations or presenting offers of evidence are not covered by the notion “other enforceable judicial decision having the same effect as a (national) arrest warrant.” An EAW issued in disregard of this requirement would be invalid.

Furthermore, because of the principle of effective legal protection stemming from Art. 47 CFR, it must be possible to have the conditions of the EAW reviewed before a court. This also applies if national law does not provide for this possibility.

Lastly, the CJEU stated that neither the FD EAW nor Art. 47 CFR require a national court to release a person who is the subject of a pre-trial detention measure if it finds that the EAW that led to that person’s surrender is invalid. An opposite consequence would be counter to the aim of the EAW mechanism, which is to ensure that an alleged offender does not go unpunished. The EAW has, in principle, exhausted its legal effects after the accused person’s surrender to the issuing Member State and it is not an order for detention of the person sought in the issuing Member State. Therefore, it is for the national law to lay down the consequences of an invalid EAW.

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