

CJEU: National Arrest Decision and EAW Cannot be Issued by Public Prosecutor Alone

News

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On 10 March 2020, the CJEU decided on the consequences of the Bulgarian criminal procedure system, under which both the European arrest warrant and the decision on which it is based had been issued by the Bulgarian public prosecutor without court review prior to surrender. The judgment in the underlying [Case C-648/20 PPU](#) (*European Arrest Warrant issued for PI*) follows up the previous decision of 13 January 2021 in [Case C-414/20 PPU](#) (“MM” → [see separate news item](#)). While the CJEU in *MM* had to decide on the legal effects of a potentially invalid EAW, which was solely issued by the Bulgarian public prosecutor, in the criminal proceedings in Bulgaria, the case in *PI* concerned the handling of such EAWs in the executing Member State.

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Facts of the case and question referred

In the case at issue, the Westminster Magistrates’ Court (UK) was called on to execute a Bulgarian EAW against PI. The prosecutor of Svishtov Regional Prosecutor’s Office issued an EAW for the purposes of the criminal prosecution of PI who is suspected of having committed theft of money and jewellery. This EAW is based on an order from said prosecutor that PI be detained for a maximum period of 72 hours.

The Bulgarian system does not foresee any participation of a court prior to the issuance of EAWs. It is neither required that a court reviews the EAW nor issues a national arrest warrant. According to the Bulgarian system, a court is only involved after surrender of the requested person when a court has to impose a preventive measure involving deprivation or restriction of liberty.

The Westminster Magistrates’ Court expressed doubts as to whether this approach satisfies the requirements of dual level of protection as established by the FD EAW as interpreted by the CJEU case law (in particular in *Bob-Dogi* (C-241/15 → [eu crim 2/2016](#), p. 80) and *OG and PI* (C-508/18 and C-82/19 PPU → [eu crim 1/2019](#), 33-36).

Findings of the CJEU

The CJEU confirmed its standpoint that the requested person must enjoy a dual level of protection for procedural and fundamental rights. Art. 8(1) lit. c) FD EAW entails that effective judicial protection should be adopted, at least:

- At the first level, at which a national judicial decision, such as a national arrest warrant or a comparable measure, is adopted; or



- 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).

This concept presupposes that judicial review is exercised *before* the arrest warrant is executed. In other words, a court must be involved prior to submission of an EAW guaranteeing adequate protection of the individual rights. Consequently, a Bulgarian law that provides only *ex post* judicial review does not comply with the requirement set by Art. 8(1) lit. c) FD EAW and the executing judicial authority can refuse the EAW.

The CJEU clarified that this finding is not called into question by its decision of 13 January 2021 in *MM*. In this context, the CJEU states: “[in *MM*,] the Court (...) confined itself to holding that, where the law of the issuing Member State does not contain a separate legal remedy, EU law confers jurisdiction on a court of that Member State to review indirectly the validity of the European arrest warrant. Accordingly, it cannot be inferred from that judgment that the Court ruled that the existence of such a possibility of *ex post* judicial review was such as to satisfy the requirements inherent in the effective judicial protection of the rights of the requested person.”

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