

CJEU Rules on Compliance of FD EAW with Charter of Fundamental Rights

News

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In its [judgment](#) of 28 January 2021 in [Case C-649/19](#) (“*criminal proceedings against IR*”), the CJEU took a stance on the extent of a person’s rights of information if he/she is subject to a European Arrest Warrant (EAW). In addition, the CJEU had to rule on the validity of Framework Decision 2002/584 on the European Arrest Warrant (FD EAW) in the light of the rights to liberty and to an effective remedy (Arts. 6 and 47 CFR).

Facts of the case

In the case at issue, the Specialised Prosecutor’s Office in Bulgaria initiated criminal proceedings against IR, accusing the defendant of participation in a criminal group for the purpose of committing tax offences. During the pre-trial stage of the criminal proceedings, IR was informed of only some of his rights. Since IR absconded, the public prosecutor issued an EAW. The referring Specialised Criminal Court annulled this EAW. The court had doubts as to whether the EAW is compatible with Directive 2012/13 on the right to information in criminal proceedings.

Questions referred

The Bulgarian court first sought guidance from the CJEU whether persons requested by means of an EAW for the purpose of arrest not only enjoy the rights as explicitly provided for in Art. 5 of Directive 2012/13 (“Letter of Rights in EAW proceedings”) but also the other, more extensive rights in Arts. 4, 6, and 7 of the Directive which apply to “suspects or accused persons who are arrested or detained.” These rights include the right to be provided with a written letter of rights on arrest that informs about the possibility of challenging the lawfulness of the arrest, obtaining a review of the detention, and making a request for provisional release.

Should that question be answered in the negative, the Specialised Criminal Court secondly voiced doubt over the validity of the FD EAW since the information communicated to persons arrested on the basis of an EAW is more limited than the information communicated to suspects or accused persons who are arrested or detained in national proceedings (in accordance with Arts. 4, 6, 7 of Directive 2012/13). As a consequence, persons requested for the purpose of execution of an EAW have excessive difficulties in challenging warrants issued against them.

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Findings of the CJEU on the first question (scope of information rights)

The CJEU first observed that the wording of the provisions of Directive 2012/13 does indeed not lead to the conclusion whether the various rights are conferred also to persons who are arrested or detained for the purposes of the execution of an EAW. The CJEU concluded, however, that the rights enshrined in Arts. 4, 6, and 7 do not apply to persons in EAW situations because the context and objective of Directive 2012/13 are pretty clear in this regard. In line with Art. 5 ECHR, Directive 2012/13 distinguishes situations of persons who are deprived of liberty in the sense of Art. 5(1) lit. c) and persons who are lawfully arrested with a view to deportation and extradition (Art. 5(1) lit. f). For the CJEU, it follows from this that the provisions referring to suspects or accused persons who are arrested or detained do not concern persons who are arrested for the purposes of the execution of an EAW.

This interpretation is confirmed by the fact that Directive 2012/13 sets out a twofold objective: (1) It lays down minimum standards to be applied in the field of information to be given to suspected or accused persons, in order to enable them to prepare their defence and to safeguard the fairness of the proceedings; (2) It also seeks to preserve the specific characteristics of the procedure relating to EAWs, which is characterised by a desire to simplify and expedite the surrender procedure.

Findings of the CJEU on the second question (validity of the FD EAW)

The CJEU first noted that the validity of the FD EAW must be established in the light of primary Union law, i.e., Arts. 6 and 47 CFR. In this context, the CJEU stressed that the FD EAW forms part of a comprehensive system of safeguards, in which the subject to an EAW is able to exercise his/her rights. This includes:

- According to previous case law (Joined Cases C-508/18 and C-82/19 PPU (→ [eucrim 1/2019, 33-36](#)) and C-566/19 PPU and C-626/19 PPU (→ [eucrim 4/2019, 242-245](#))), the right to liberty must be protected by an independent review either at the first level, at which a national decision, such as a national arrest warrant, is adopted, or at the second level, at which a European arrest warrant is issued;
- The person subject to an EAW enjoys the safeguards of fair proceedings because he/she acquires the status of “accused person” from the moment of his/her arrest, so that all the rights referred to in Arts. 4, 6, and 7 of Directive 2012/13 can be exercised (enabling the accused person to prepare his/her defence);
- Information provided in Art. 8(1) lit. d) and e) corresponds, in essence, to the information referred to in Art. 6 of Directive 2012/13;
- The mere fact that the person who is the subject of an EAW 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/she is surrendered to the competent authorities of the issuing Member State, cannot call into question the effectiveness of the right to judicial protection.

In sum, none of the concerns put forward by the referring court affect the validity of the FD EAW.

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