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OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 11 February 2021 [1]

Case C-648/20 PPU

Svishtov Regional Prosecutor's Office
v
PI

(Request for a preliminary ruling from Westminster Magistrates' Court (United Kingdom))

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – National arrest warrant and European arrest warrant issued by the public prosecutor's office of a Member State – Effective judicial protection – No judicial review in the issuing Member State prior to surrender of the requested person to that Member State – Right to liberty – Articles 6 and 47 of the Charter of Fundamental Rights of the European Union)

[1] Original language: French.

I. Introduction

1. The procedures for issuing a European arrest warrant differ significantly between Member States, particularly as regards the authorities designated as an 'issuing judicial authority' and 'executing judicial authority', within the meaning of Article 6(1) and (2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, [2] as amended by Council Framework Decision 2009/299/JHA of 26 February 2009. [3] There are also differences in the legal remedies established by Member States to enable persons subject to a European arrest warrant to challenge before a court the conditions for issuing that warrant and the national decision on which it must be based.

2. Faced with the diversity of those procedural systems, the Court has developed a line of authority focusing on the judicial nature of the issuing and executing authorities called upon to cooperate in connection with a surrender procedure based on Framework Decision 2002/584. [4]

3. By adopting an interpretation whereby those judicial authorities are comprised not only of judges or courts, but also, more broadly, of authorities which, like members of public prosecutor's offices, participate in the administration of criminal justice in the issuing or executing Member State, the Court has accepted

[2] OJ 2002 L 190, p. 1.

[3] OJ 2009 L 81, p. 24, 'Framework Decision 2002/584'. For an overview of those differences, see the Report from the Commission to the European Parliament and the Council of 2 July 2020 on the implementation of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (COM(2020) 270 final, in particular pp. 5 and 6). As regards issuing judicial authorities, it is apparent from that report that 'in half of the Member States courts or judges are solely competent to issue a European arrest warrant. In a few Member States, it is entirely to the public prosecutor's offices to issue a European arrest warrant. Several Member States have designated both courts and public prosecutor's offices as issuing authorities. Furthermore, some of those Member States have designated different authorities depending on the stage of criminal proceedings (e.g. pre-indictment and post-indictment or pre-trial and trial) or on the purpose of the European arrest warrant (prosecution or execution of a sentence) … A small number of Member States have appointed a single dedicated body (e.g. the Prosecutor General's Office)' (p. 6). Concerning executing judicial authorities, the report states that 'as competent executing authorities, a large majority of Member States have designated courts (e.g. courts of appeal; district courts; supreme courts) or judges … A few Member States have designated public prosecutor's offices. A small number of Member States have designated both courts and public prosecutor's offices. Some Member States have appointed a single dedicated body (e.g. the Prosecutor General's Office or the High Court)' (p. 6). For a more detailed picture of the competent authorities and procedures in the Member States, see also 'Questionnaire on the CJEU's judgments in relation to the independence of issuing judicial authorities and effective judicial protection – Updated compilation of replies and certificates', Eurojust, 7 June 2019 (revised on 12 March 2020), available at the following internet address: https://www.eurojust.europa.eu/questionnaire-cjeus-judgments-relation-independence-issuing-judicial-authorities-and-effective-0.

[4] See judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)* (C-510/19, EU:C:2020:953, paragraph 29).

that that framework decision allows Member States to establish varied procedures for issuing or executing a European arrest warrant.

4. That said, it also follows from the Court's case-law that the discretion which Member States thus enjoy must be exercised in compliance with the requirements inherent in the effective judicial protection of persons subject to a European arrest warrant, in so far as such warrants are liable to impinge on the right to liberty guaranteed by Article 6 of the Charter of Fundamental Rights of the European Union. [5]

5. In each case before it, the Court must therefore determine whether the procedural system at issue permits a balanced reconciliation of the right to effective judicial protection of persons subject to a European arrest warrant and the effectiveness of the system of surrender established by Framework Decision 2002/584.

6. This request for a preliminary ruling concerns, in essence, the compatibility with that framework decision of a procedural system under which, where the European arrest warrant and the national judicial decision on which that warrant is based are both adopted by a public prosecutor at the pre-trial stage of criminal proceedings, the only possible judicial review of those decisions in the issuing Member State can take place solely after the surrender of the requested person to that Member State.

7. In the present Opinion, I will set out the reasons why such a procedural system does not, in my view, meet the requirements inherent in effective judicial protection.

II. Legal context

A. Framework Decision 2002/584

8. Article 1 of Framework Decision 2002/584, entitled 'Definition of the European arrest warrant and obligation to execute it', 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.

5 'The Charter'.

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].'

9. Under Article 6(1) and (3) of Framework Decision 2002/584:

'1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

…

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.'

10. In Article 8 of that framework decision, entitled 'Content and form of the European arrest warrant', paragraph 1(c) states:

'The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

…

(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.'

11. The annex to the framework decision provides a specific form which the issuing judicial authorities are required to complete, furnishing the specific information requested. [6] Section (b) of that form, relating to the 'decision on which the warrant is based', refers in point 1 to an 'arrest warrant or [a] judicial decision having the same effect'.

B. Bulgarian law

12. Framework Decision 2002/584 was transposed into Bulgarian law by the zakon za ekstraditsiata i evropeiskata zapoved za arest (Law on extradition and the European arrest warrant, 'the ZEEZA'), [7] Article 37 of which sets out the provisions on the issuing of a European arrest warrant in almost identical terms to those of Article 8 of that framework decision.

13. Pursuant to Article 56(1)(1) of the ZEEZA, the public prosecutor is competent, at the pre-trial stage of criminal proceedings, to issue a European arrest

[6] See, inter alia, judgment of 6 December 2018, *IK (Enforcement of an additional sentence)* (C-551/18 PPU, EU:C:2018:991, paragraph 49 and the case-law cited).

[7] DV No 46 of 3 June 2005.

warrant for the accused person. During that stage of the criminal proceedings, Bulgarian law makes no provision for the possibility of a court participating in the issue of the European arrest warrant or reviewing the validity of that warrant, either before or after it is issued. [8]

14. Under Article 200 of the nakazatelno protsesualen kodeks (Code of Criminal Procedure, 'the NPK'), read in conjunction with Article 66 of the ZEEZA, a European arrest warrant is open to appeal only before the public prosecutor's office of the higher court.

15. The placement in provisional detention of a person who is the subject of a criminal prosecution is governed, at the pre-trial stage of criminal proceedings, by Article 64 of the NPK.

16. Under Article 64(1) of the NPK, 'the provisional detention order shall be adopted during the preliminary proceedings by the court of first instance having jurisdiction on application by the public prosecutor'.

17. In accordance with Article 64(2) of the NPK, the public prosecutor may adopt a measure ordering the detention of the accused person for a maximum of 72 hours with a view to allowing that person to be brought before the court with jurisdiction to make a provisional detention order, if appropriate. It is the measure adopted by the public prosecutor under that provision which serves as the basis for the European arrest warrant, which is also issued by the public prosecutor at the pre-trial stage of criminal proceedings.

III. The dispute in the main proceedings and the question referred for a preliminary ruling

18. The proceedings before Westminster Magistrates' Court (United Kingdom) concern a European arrest warrant issued by the rayonna prokuratura Svishtov (prosecutor of Svishtov Regional [9] Prosecutor's Office, Bulgaria) on 28 January 2020 for the surrender of PI, a Bulgarian national, to the Republic of Bulgaria in order to be prosecuted for an offence of theft allegedly committed on 8 December 2019. PI was arrested on 11 March 2020 in the United Kingdom on the basis of that European arrest warrant and was detained pending his surrender.

19. In the main proceedings, PI objects to the execution of the European arrest warrant issued against him, arguing that Bulgarian legislation does not ensure the dual level of protection which must be guaranteed for persons subject to a European

8 By contrast, as the referring court states in its request for a preliminary ruling, during the trial phase, it is the court with jurisdiction which has the power to issue a European arrest warrant.

9 Translator's note: This would normally be translated as the District Prosecutor's Office, however, as Westminster Magistrate's Court used the name 'Regional Prosecutor's Office', we have followed this approach.

arrest warrant. He relies, in that regard, on the Court's case-law resulting from the judgments of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, [10] and of 27 May 2019, *PF (Prosecutor General of Lithuania)*, [11] followed by the judgments of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)*, [12] and of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor's Office)*. [13]

20. Under Bulgarian law, a public prosecutor may, on the basis of Article 64(2) of the NPK, adopt a detention order valid for a maximum of 72 hours which may serve as the basis for the issue by that prosecutor of a European arrest warrant. According to PI, in neither case are the fundamental and procedural rights of the requested person protected by being subject to judicial review, including as to the proportionality of the order. Since the detention order constitutes a national arrest warrant, it is not subject to any judicial review in the issuing Member State prior to the surrender of the requested person to that Member State. Furthermore, the European arrest warrant is not subject to any judicial review either before or after surrender.

21. Before the referring court, the public prosecutor of Svishtov Regional Prosecutor's Office argued, in contrast, that the interests of the person concerned were always protected through the involvement of a lawyer acting on his behalf. The decision to issue the European arrest warrant is based on the detention order adopted under Article 64(2) of the NPK, which requires that, after the person has been surrendered, he must be brought before a court in the issuing Member State for confirmation or substitution of the arrest and detention measures. Following surrender, the person concerned or his legal representative has the right to make representations before that court on his continued detention. The Bulgarian system therefore complies with Framework Decision 2002/584 and the Court's case-law as it provides the dual level of protection required by that case-law.

22. In the light of the two propositions put before it, the referring court wonders whether the dual level of protection of the requested person, as required by the Court's case-law, is ensured where both the European arrest warrant and the national arrest warrant on which it is based are issued by a public prosecutor and there is no possibility for those decisions to be reviewed by a court prior to the surrender of the requested person to the issuing Member State. The referring court points out, in that regard, that under Bulgarian law, neither the national detention

10 C-508/18 and C-82/19 PPU, EU:C:2019:456.

11 C-509/18, EU:C:2019:457.

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

13 C-625/19 PPU, 'judgment in *Openbaar Ministerie (Swedish Public Prosecutor's Office)*', EU:C:2019:1078.

order nor the European arrest warrant is founded on a decision of a court and neither is open to challenge before the courts in the issuing Member State prior to the surrender of the requested person to that Member State.

23. According to the referring court, the position in Bulgaria differs from the other cases previously referred to the Court for consideration, in that there is no possibility of court involvement prior to surrender in respect of the national arrest warrant or the European arrest warrant and there is no possibility of review by a court of the decision of the public prosecutor to issue a European arrest warrant.

24. In those circumstances, Westminster Magistrates' Court decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Where surrender is sought in order to prosecute a requested person, and where the decision to issue an underlying national arrest warrant … and the decision to issue a European arrest warrant … are both taken by a public prosecutor, without any involvement of a Court prior to surrender, does a requested person receive the dual level of protection envisaged by the Court in the judgment of 1 June 2016, *Bob-Dogi* (C-241/15, EU:C:2016:385) if:

(a) the effect of the national arrest warrant is limited to detaining the individual for a maximum of 72 hours for the purpose of bringing him before a Court; and

(b) on surrender, it is solely a matter for the Court whether to order release, or to continue detention, in light of all the circumstances of the case?'

25. The Court decided to accede to the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

IV. Analysis

26. By the question it submits for a preliminary ruling, the referring court asks, in essence, the Court to rule on whether Framework Decision 2002/584 is to be interpreted as meaning that the requirements inherent in effective judicial protection which must be afforded to a person subject to a European arrest warrant for the purposes of a criminal prosecution are satisfied where, under the law of the issuing Member State, both the European arrest warrant and the national judicial decision on which it is based, first, are issued by an authority that, whilst participating in the administration of criminal justice in that Member State, is not itself a court, and, second, where those requirements cannot be reviewed by a court in that Member State prior to the surrender of the person concerned.

27. However, the referring court does not cast doubt on the classification of Bulgarian public prosecutors as an 'issuing judicial authority' within the meaning

of Article 6(1) of Framework Decision 2002/584, in the light of the criteria identified by the Court in order to be eligible to enjoy that classification, that is, they must participate in the administration of criminal justice [14] and act independently in the execution of those of their responsibilities which are inherent in the issuing of a European arrest warrant. [15]

28. It should be recalled that, according to the Court, 'the existence of judicial review of the decision taken by an authority other than a court to issue a European arrest warrant is not a condition for classification of that authority as an issuing judicial authority within the meaning of Article 6(1) of Framework Decision 2002/584. That requirement does not fall within the scope of the statutory rules and institutional framework of that authority, but concerns the procedure for issuing such a warrant, which must meet the requirement of effective judicial protection'. [16]

29. Since the status of 'issuing judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, is not conditional on the existence of judicial review of the decision to issue the European arrest warrant and of the national decision on which it is based, the Court is requested to give a ruling solely on whether the Bulgarian procedure for issuing a European arrest warrant meets the requirements inherent in effective judicial protection.

30. The Court recently dealt with a case involving that Bulgarian procedure, but in different circumstances and from a different perspective.

31. Thus, in the case which gave rise to the judgment in *MM*, the Court was faced with the situation whereby a court in the issuing Member State, before which an application had been brought challenging the lawfulness of a provisional detention order under Article 270 of the NPK, wished to know what consequences it should draw from the finding that a European arrest warrant was not based on a '[national] arrest warrant or any other enforceable judicial decision having the same effect', within the meaning of Article 8(1) of Framework Decision 2002/584, and was therefore invalid. The national court stated, in that regard, that it did not have the power, in the context of such an action, to review indirectly the validity of a national or European arrest warrant in so far as it did not have jurisdiction to rule on the public prosecutor's decision to issue such a warrant, since an appeal against that

14 According to the Court, 'an authority, such as a public prosecutor's office, which is competent, in criminal proceedings, to prosecute a person suspected of having committed a criminal offence so that that person may be brought before a court, must be regarded as participating in the administration of justice of the relevant Member State': see judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 60).

15 I refer in that regard to points 59 to 62 of my Opinion in *MM* (C-414/20 PPU, EU:C:2020:1009).

16 See, inter alia, judgment of 13 January 2021, *MM* (C-414/20 PPU, 'judgment in *MM*', EU:C:2021:4, paragraph 44 and the case-law cited).

decision could be brought only before the public prosecutor's office of the higher court.

32. In its judgment in *MM*, the Court held that 'where provision is not made in the legislation of the issuing Member State for court proceedings for the purpose of reviewing the conditions under which a European arrest warrant was issued by an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, Framework Decision 2002/584, considered in the light of the right to effective judicial protection, enshrined in Article 47 of the Charter, is to be interpreted as allowing the national court – before which an action has been brought to challenge the lawfulness of the continued provisional detention of a person who has been surrendered pursuant to a European arrest warrant issued on the basis of a national measure that cannot be regarded as a "[national] arrest warrant or any other enforceable judicial decision having the same effect", within the meaning of Article 8(1)(c) of that framework decision, and in the context of which a plea in law is raised alleging that that European arrest warrant is invalid in the light of EU law – to find that it has jurisdiction to conduct such a review of validity'. [17] In that judgment, the Court also considered the consequences that the Bulgarian courts should draw from the invalidity of a European arrest warrant where it has been executed.

33. In contrast, in that judgment, the Court did not rule directly on whether the Bulgarian procedure for issuing a European arrest warrant by a public prosecutor during the pre-trial stage of criminal proceedings met the requirements inherent in effective judicial protection.

34. In holding that Framework Decision 2002/584, considered in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, enables a national court in the issuing Member State to review indirectly the conditions for issuing a European arrest warrant where its validity is challenged before that court, the Court simply made clear that EU law confers jurisdiction on such a national court when the law of that Member State does not contain a separate legal remedy. It cannot be inferred from this that, because of the competence which Article 47 of the Charter confers on the court of the issuing Member State, the national procedure for issuing a European arrest warrant should thus be regarded as complying with the requirements inherent in effective judicial protection. The approach taken by the Court cannot therefore have the effect of eliminating the obligation on the issuing Member State to establish, in its national procedural law, with the utmost clarity and legal certainty, legal remedies enabling persons subject to a national arrest warrant adopted by a public prosecutor, serving as the basis for a subsequent European arrest warrant also adopted by a public prosecutor, to have those decisions reviewed by a court.

35. I also note out that, unlike the case which gave rise to the judgment in *MM*, it is the executing judicial authority and not a court in the issuing Member State

17 See judgment in *MM* (paragraph 74).

which has submitted a question for a preliminary ruling in the present case. Furthermore, there is no dispute in the main proceedings that a '[national] arrest warrant or any other enforceable judicial decision having the same effect', within the meaning of Article 8(1)(c) of Framework Decision 2002/584, exists.

36. In that regard, it is apparent from the Court's case-law that the national measure on which the European arrest warrant must be based, in accordance with Article 8(1)(c) of Framework Decision 2002/584, constitutes a judicial decision. Thus, the Court has held that, given the need to ensure consistency between the interpretations of the various provisions of that framework decision, the interpretation that the term 'judicial authority', within the meaning of Article 6(1) thereof, must be interpreted as referring to the Member State authorities that administer criminal justice appears, in principle, transposable to Article 8(1)(c) of that framework decision. Accordingly, the latter provision must be interpreted as meaning that the concept 'judicial decision' covers the decisions of the Member State authorities that administer criminal justice. [18]

37. Consequently, since it follows from the explanations provided to the Court by the Bulgarian Government that the public prosecutor is an authority responsible for administering criminal justice in Bulgaria, the decision which that prosecutor takes pursuant to Article 64(2) of the NPK must be regarded as a 'judicial decision' within the meaning of Article 8(1)(c) of Framework Decision 2002/584. [19]

38. I also consider, in the light of the definition of '[national] arrest warrant or any other enforceable judicial decision having the same effect', within the meaning of Article 8(1)(c) of that framework decision, which was adopted by the Court in its judgment in *MM*, [20] that that concept covers a measure, adopted by the public prosecutor on the basis of Article 64(2) of the NPK, ordering the detention of the accused person for a maximum of 72 hours with a view to allowing that person to be brought before the court with jurisdiction to make a provisional detention order, if appropriate.

39. With those clarifications in mind, it is necessary to determine whether the Bulgarian procedural system – under which the public prosecutor is the authority that is competent during the pre-trial stage of criminal proceedings to issue a

18 See judgment of 10 November 2016, *Özçelik* (C-453/16 PPU, EU:C:2016:860, paragraphs 32 and 33).

19 See, by analogy, judgment of 10 November 2016, *Özçelik* (C-453/16 PPU, EU:C:2016:860, paragraph 34).

20 See judgment in *MM*, from which it is apparent that 'Article 8(1)(c) of Framework Decision 2002/584 is to be interpreted as meaning that a European arrest warrant must be regarded as invalid where it is not based on a "[national] arrest warrant or any other enforceable judicial decision having the same effect", within the meaning of that provision. That concept covers the national measures adopted by a judicial authority to search for and arrest a person who is the subject of a criminal prosecution, with a view to his appearance before a court for the purpose of conducting the stages of the criminal proceedings' (paragraph 57).

European arrest warrant on the basis of a national decision he adopts in accordance with Article 64(2) of the NPK, where neither of those decisions can be reviewed by a court in the issuing Member State prior to the surrender of the requested person to that Member State – provides the dual level of protection of the rights of the person subject to a European arrest warrant, as required by the Court.

40. In other words, the question raised in the present reference for a preliminary ruling is whether, where both the national arrest warrant and the European arrest warrant are adopted by a public prosecutor and are therefore judicial decisions, the dual level of protection of rights which must be guaranteed for the requested person also presupposes that it must be possible for those decisions to be reviewed by a court in the issuing Member State prior to the surrender of that person to that Member State.

41. In order to answer that question, it is necessary to recall the case-law of the Court on the dual level of protection of rights which must be afforded to persons subject to a European arrest warrant in the issuing Member State.

42. It should be pointed out in that connection that, as the Court has previously held, 'as regards proceedings relating to a European arrest warrant, observance of the rights of the person whose surrender is requested *falls primarily within the responsibility of the issuing Member State*, which must be presumed to be compliant with EU law, in particular the fundamental rights conferred by that law'. [21]

43. Furthermore, the Court has consistently held 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'. [22]

44. Thus, according to the Court, 'as regards a measure, such as the issuing of a European arrest warrant, which is capable of impinging on the right to liberty of the person concerned, 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'. [23]

45. It follows that, 'where the law of the issuing Member State confers the competence to issue a European arrest warrant on an authority which, whilst participating in the administration of justice in that Member State, is not a judge or

21 See, inter alia, judgment in *MM* (paragraph 61 and the case-law cited). Emphasis added.

22 See, inter alia, judgment in *MM* (paragraph 62 and the case-law cited).

23 See, inter alia, judgment in *MM* (paragraph 63 and the case-law cited).

a court, *the national judicial decision, such as a national arrest warrant, on which the European arrest warrant is based, must, itself, meet those requirements*'. [24]

46. According to the Court, 'where those requirements are met, the executing judicial authority may therefore be satisfied that the decision to issue a European arrest warrant for the purpose of criminal prosecution is based *on a national procedure that is subject to review by a court* and that *the person in respect of whom that national arrest warrant was issued has had the benefit of all safeguards appropriate to the adoption of that type of decision*, inter alia those derived from the fundamental rights and fundamental legal principles referred to in Article 1(3) of Framework Decision 2002/584'. [25]

47. It thus follows from that case-law that, in a procedural system which gives the public prosecutor the competence to issue a European arrest warrant, the first level of protection requires the prior adoption of a national judicial decision, such as a national arrest warrant, which must be subject to review by a court.

48. Furthermore, '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'. [26]

49. Moreover, it should be recalled that 'where the law of the issuing Member State confers the competence to issue a European arrest warrant on an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, the decision to issue such an arrest warrant and, inter alia, the proportionality of such a decision must be capable of being the subject, in the Member State, of court proceedings which meet in full the requirements inherent in effective judicial protection'. [27]

50. According to the Court, 'such proceedings against a decision to issue a European arrest warrant for the purposes of a criminal prosecution taken by an authority which, whilst participating in the administration of justice and having the necessary independence from the executive, does not constitute a court serve to ensure that judicial scrutiny of that decision and of the conditions to be met when

[24] See judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 69). Emphasis added.

[25] See judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 70). Emphasis added.

[26] See, inter alia, judgment in *MM* (paragraph 64 and the case-law cited).

[27] See, inter alia, judgment in *MM* (paragraph 65 and the case-law cited).

issuing that warrant and, in particular, the proportionality of such a warrant complies with the requirements inherent in effective judicial protection'. [28]

51. Accordingly, it is for the Member States 'to ensure that their legal orders effectively safeguard the level of judicial protection required by Framework Decision 2002/584, as interpreted by the Court's case-law, by means of the procedural rules which they implement and which may vary from one system to another'. [29]

52. In that context, 'introducing a separate right of appeal against the decision to issue a European arrest warrant taken by a judicial authority other than a court is just one possibility in that regard'. [30]

53. In addition, the Court has accepted that 'the inclusion, in the national legal system, of procedural rules under which the conditions for issuing a European arrest warrant and, in particular, its proportionality may be subject to judicial review in the issuing Member State, before or at the same time as its adoption, and also after its adoption, meets the requirement of effective judicial protection'. [31]

54. That case-law demonstrates a degree of flexibility on the part of the Court, respectful of the Member States' procedural autonomy, [32] as regards the detailed rules governing the judicial review to be conducted in the issuing Member State and when that review may be carried out.

55. Furthermore, it follows from that case-law that to ensure the dual level of protection of the rights of a person subject to a European arrest warrant, it is not sufficient that 'the entire surrender procedure between Member States provided for by … Framework Decision [2002/584] is carried out under judicial supervision'. [33] Where the European arrest warrant is issued by an authority which, whilst participating in the administration of justice in the issuing Member State, is not a court, it must be possible for the national procedure leading to the adoption of such a warrant to be subject to judicial review.

56. In the present case, the Court is called on to specify when that judicial review must take place so that judicial protection can be regarded as effective.

28 See, inter alia, judgment in *MM* (paragraph 66 and the case-law cited).

29 See, inter alia, judgment in *MM* (paragraph 67 and the case-law cited).

30 See, inter alia, judgment in *MM* (paragraph 68 and the case-law cited).

31 See, inter alia, judgment in *MM* (paragraph 69 and the case-law cited).

32 See, inter alia, judgment in *MM* (paragraph 70 and the case-law cited).

33 See, inter alia, judgment of 10 November 2016, *Kovalkovas* (C-477/16 PPU, EU:C:2016:861, paragraph 37).

57. I note that, under Bulgarian law, neither the national decision adopted by the public prosecutor on the basis of Article 64(2) of the NPK nor his decision to issue a European arrest warrant may be challenged before a court. In addition, the case which gave rise to the judgment in *MM* reveals uncertainty as to whether it is even possible under Bulgarian law for the court before which the person subject to a European arrest warrant is brought to review indirectly the conditions for issuing that warrant once that person has been surrendered.

58. Assuming, however, that such a possibility of indirect judicial review indeed exists under Bulgarian law, the Bulgarian Government and the European Commission submit – relying in particular on the principles laid down in the judgments in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* and *Openbaar Ministerie (Swedish Public Prosecutor's Office)* – that the national procedure leading to the issue of a European arrest warrant complies with the dual level of protection of the requested person's rights, as required by the Court, since, once that person has been surrendered, he must be brought promptly before the court with jurisdiction in the issuing Member State to decide whether to end or continue his provisional detention. Therefore, according to the Bulgarian Government and the Commission, the existence in the Bulgarian legal system of the possibility of having a court review the conditions for issuing the European arrest warrant after the requested person has been surrendered is sufficient to find that the procedure for issuing a European arrest warrant by a public prosecutor during the pre-trial stage of criminal proceedings meets the requirements inherent in effective judicial protection.

59. I nevertheless take the view, as PI essentially submits, that the possibility of having a court in the issuing Member State review the national procedure leading to the issue of a European arrest warrant – a review which may take place only after the person concerned has been surrendered to that Member State – does not meet the requirements inherent in effective judicial protection, as defined by the Court and as they result from interpreting Framework Decision 2002/584 in the light of Articles 6 and 47 of the Charter.

60. In my opinion, the flexibility which the Court has thus far demonstrated in examining whether the requirements inherent in judicial protection are satisfied in the procedural systems submitted to it for assessment should not go so far as to accept that those requirements are met by a system in which the sole judicial protection available in the issuing Member State to a person subject to a European arrest warrant can be ensured only after that person has been surrendered to that State.

61. Since observance of the rights of the person whose surrender is requested falls primarily, as I have indicated above, within the responsibility of the issuing Member State, I consider that if judicial protection of the person subject to a European arrest warrant is to be fully effective, that person must be afforded such protection before his surrender to that Member State, at least at one of the two levels of protection required by the case-law of the Court.

62. Contrary to the submissions of the Bulgarian Government and the Commission, I do not think that it can be inferred from the judgments in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* and *Openbaar Ministerie (Swedish Public Prosecutor's Office)* that a national procedure such as that at issue in the main proceedings complies with the requirements inherent in effective judicial protection.

63. In each of those judgments, the Court carried out a comprehensive examination of the national legislation at issue, at the two levels of protection which must be afforded to a person subject to a European arrest warrant, in order to determine whether that national legislation complied with the requirements inherent in effective judicial protection.

64. Accordingly, in its judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)*, the Court made clear that 'the issuing of a European arrest warrant in connection with criminal proceedings is, in the French legal system, necessarily based on *a national arrest warrant issued by a court, usually by an investigating judge*.[34] Furthermore, the Court took account of the fact that, 'when a European arrest warrant is issued by the Public Prosecutor's Office in connection with criminal proceedings, the court which issued the national arrest warrant on the basis of which the European arrest warrant was issued at the same time requests the Public Prosecutor's Office to issue a European arrest warrant *and carries out an assessment of the conditions to be met when issuing such a European arrest warrant and, in particular, whether it is proportionate*.[35]

65. Furthermore, the Court has taken into consideration the existence, in the French legal system, of an action for a declaration of invalidity on the basis of Article 170 of the code de procédure pénale (French Code of Criminal Procedure), which may be brought against the decision of the public prosecutor's office to issue a European arrest warrant after the requested person's surrender and appearance before the investigating judge if the European arrest warrant is issued in respect of a person who is not yet a party to the proceedings.[36]

66. The Court inferred from those factors that 'the inclusion of such procedural rules in the French legal system thus demonstrates that the proportionality of the decision of the Public Prosecutor's Office to issue a European arrest warrant may be subject to judicial review before or almost at the same time as it is issued and, in

34 Judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* (paragraph 67). Emphasis added.

35 Judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* (paragraph 68). Emphasis added.

36 See judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* (paragraph 69).

any event, after the European arrest warrant has been issued, since such scrutiny may take place, depending on the circumstances, before or after the actual surrender of the requested person'. [37]

67. It concluded that such a system therefore met the requirements inherent in effective judicial protection. [38]

68. As indicated by the approach advocated by the Bulgarian Government and the Commission, that judgment could be construed as meaning that it is sufficient, for a national procedure providing for the issue of a European arrest warrant by a public prosecutor to meet the requirements inherent in effective judicial protection, that the conditions for issuing such a warrant may be subject to judicial review in the issuing Member State after the surrender of the requested person.

69. I do not agree with that interpretation of the judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)*. In my view, the Court conducted a comprehensive assessment of the two levels of protection afforded by French law and took account of the fact that the conditions for issuing a European arrest warrant by the public prosecutor's office could be subject to judicial review prior to surrender, at the first level of protection, since, under French law, the European arrest warrant is based on a national arrest warrant issued by a judge who, moreover, assesses the conditions to be met when issuing a European arrest warrant and, in particular, whether it is proportionate.

70. Accordingly, I am not persuaded that in order to reach the conclusion that the French procedural system meets the requirements inherent in effective judicial protection, the Court was satisfied with the existence in French law of a judicial remedy which may be brought, where the requested person is not yet a party to the proceedings, only after that person has been surrendered. It has, in my view, been decisive for there to be a finding that the national procedure leading to the adoption of a national arrest warrant serving as the basis for a European arrest warrant is in all cases subject to judicial review in the issuing Member State prior to surrender. [39]

37 Judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* (paragraph 70).

38 See judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* (paragraph 71).

39 I do not think that a different conclusion could be drawn from the judgment of 28 January 2021, *IR (Letter of rights)* (C-649/19, EU:C:2021:75), in which the Court referred to the judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* in order to rule that '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 a criminal prosecution can be exercised before the surrender of the person concerned to the competent authorities of that Member State' (paragraph 79). In the light of the comprehensive assessment of the two levels of protection which the Court carries out in each case submitted to it in order to decide whether a procedural system meets the requirements inherent in effective judicial protection, the paragraph cited above cannot,

71. In my view, that opinion is borne out by the judgment in *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, in which the Court replied to the question whether Framework Decision 2002/584 is to be interpreted as meaning that, where the competence to issue a European arrest warrant for the purposes of a criminal prosecution is conferred on an authority which, whilst participating in the administration of justice in that Member State, is not itself a court, the requirements inherent in effective judicial protection are satisfied if, prior to that authority's actual decision to issue a European arrest warrant, a court has assessed the conditions for issuing that warrant and, in particular, its proportionality.

72. To enable that question to be answered in the affirmative, the Court also carried out a comprehensive assessment of the two levels of protection afforded by Swedish law in order to determine whether it met the requirements inherent in effective judicial protection.

73. Accordingly, the Court stated that 'the issue of a European arrest warrant for the purposes of a criminal prosecution is necessarily based, in the Swedish legal system, *on a decision ordering the provisional detention of the person concerned, which is made by a court*', [40] making clear that, 'in order to establish that provisional detention is necessary, the onus is on the court with jurisdiction to assess the proportionality of other possible measures too, such as the issue of a European arrest warrant'. [41] The Court inferred from the information available to it that '*the review of proportionality which that court will be required to carry out as part of the examination of whether provisional detention is necessary will also cover the issuing of a European arrest warrant*'. [42]

74. The Court also took account of the fact that 'the person requested on the basis of a European arrest warrant has the right to appeal against the decision ordering his provisional detention, without any limitation in time, even after the issue of the European arrest warrant and after his arrest in the executing Member State. If the contested decision ordering provisional detention is annulled, the European arrest

in my view, be interpreted as meaning that such requirements are satisfied where, as here, *the only possible judicial review in the issuing Member State* of the decisions of the public prosecutor to issue a national arrest warrant and thereafter a European arrest warrant takes place *after the surrender* of the person concerned to that Member State. It is also important to note that, unlike the present case, which concerns *the pre-trial stage of criminal proceedings* in Bulgaria, in which the public prosecutor is competent to issue the national arrest warrant and the European arrest warrant, the case which gave rise to the judgment of 28 January 2021, *IR (Letter of rights)* (C-649/19, EU:C:2021:75), concerned *the trial stage of criminal proceedings* in Bulgaria, during which both the provisional detention order constituting the national arrest warrant and the European arrest warrant were issued by a court (see paragraphs 22 to 26 of that judgment).

40 Judgment in *Openbaar Ministerie (Swedish Public Prosecutor's Office)* (paragraph 46). Emphasis added.

41 Judgment in *Openbaar Ministerie (Swedish Public Prosecutor's Office)* (paragraph 47).

42 Judgment in *Openbaar Ministerie (Swedish Public Prosecutor's Office)* (paragraph 48). Emphasis added.

warrant automatically becomes invalid because its issue was based on the existence of that decision'. [43]

75. The Court inferred from all of those considerations that 'the inclusion, in the Swedish legal system, of such procedural rules supports the finding that, even in the absence of a separate legal remedy against the decision of the public prosecutor to issue a European arrest warrant, the conditions for its issue and, in particular, its proportionality may be subject to judicial review in the issuing Member State before or at the same time as its adoption, and also after its adoption'. [44] Therefore, according to the Court, 'such a system … meets the requirement of effective judicial protection'. [45]

76. It should be pointed out that, in the procedural systems examined by the Court in the judgments in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* and *Openbaar Ministerie (Swedish Public Prosecutor's Office)*, the European arrest warrant issued by a public prosecutor was based on a national judicial decision which satisfied the requirements inherent in effective judicial protection. That national judicial decision was, in each of those systems, adopted by a judge or a court.

77. Moreover, in each case, the Court emphasised the fact that the judge or court which adopted the national decision serving as the basis for the European arrest warrant carried out an assessment of the conditions to be met when issuing such a warrant and, in particular, whether the warrant was proportionate.

78. Consequently, it is apparent, to my mind, from the judgments in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* and *Openbaar Ministerie (Swedish Public Prosecutor's Office)* that, although the Court accepts that the requirements inherent in effective judicial protection may be regarded as satisfied where there is no separate legal remedy against the decision of the public prosecutor to issue a European arrest warrant, or where the decision of the public prosecutor's office to issue a European arrest warrant may be the subject of court proceedings only after the person concerned has been surrendered, it does so subject to the proviso that the procedural system of the issuing Member State must establish a national procedure for issuing European arrest warrants which is, in all cases, subject to judicial review *prior to the surrender of the requested person*, at least at the first level of protection required by the case-law of the Court. In my view, proper account has to be taken of the fact that judicial review must necessarily precede surrender in order to

43 Judgment in *Openbaar Ministerie (Swedish Public Prosecutor's Office)* (paragraph 50). Furthermore, according to the information provided by the Swedish Government, 'any higher court hearing an appeal against the decision ordering provisional detention also assesses the proportionality of issuing the European arrest warrant' (paragraph 51 of that judgment).

44 Judgment in *Openbaar Ministerie (Swedish Public Prosecutor's Office)* (paragraph 52).

45 Judgment in *Openbaar Ministerie (Swedish Public Prosecutor's Office)* (paragraph 53).

understand the formula used by the Court, according to which the two-tier protection of procedural rights and fundamental rights which must be afforded to the requested person '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'. [46]

79. In short, the fact that judicial protection is available under the procedural system of the issuing Member State after the requested person has been surrendered to it does not relieve that Member State of the obligation to provide for judicial review, as appropriate, of the European arrest warrant or of the national decision on which it is based, exercisable prior to surrender.

80. As required by the case-law of the Court, the executing judicial authority thus has the assurance that 'the decision to issue a European arrest warrant for the purpose of criminal prosecution is based on a national procedure that is subject to review by a court and that the person in respect of whom that national arrest warrant was issued has had the benefit of all safeguards appropriate to the adoption of that type of decision, inter alia those derived from the fundamental rights and fundamental legal principles referred to in Article 1(3) of Framework Decision 2002/584'. [47]

81. Given the characteristics of the Bulgarian procedure, the judicial authority required to execute a European arrest warrant issued by a Bulgarian public prosecutor does not have that same assurance, since neither the national judicial decision serving as the basis for the European arrest warrant nor the European arrest warrant itself can be reviewed by a court in the issuing Member State before the person concerned is surrendered to that Member State.

82. Although it cannot be ruled out that, in a procedural system under which the accused person must be brought promptly before the court with jurisdiction to decide on whether he should be placed in provisional detention, the indirect review of the European arrest warrant issued by the public prosecutor which could be carried out by that court after surrender may meet the requirements inherent in effective judicial protection, this is nevertheless subject to the proviso that it must have been possible for the national procedure which led to the issue of that warrant to have been reviewed by a court before the surrender of the person concerned.

83. I take the view that it cannot therefore be inferred from the case-law of the Court that it is sufficient, in a procedural system under which both the European arrest warrant and the national arrest warrant on which it is based are issued an authority which is not a judge or a court, for there to be a possibility of indirect judicial review of such decisions in the issuing Member State after the person

46 See, inter alia, judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* (paragraph 60 and the case-law cited).

47 See judgment of 27 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* (C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 70).

concerned has been surrendered to that Member State in order to find that that system meets the requirements inherent in effective judicial protection.

84. I believe that interpreting Framework Decision 2002/584 in the light of Articles 6 and 47 of the Charter supports that view.

85. Having regard to the consequences that the adoption of a national arrest warrant, followed by the issue of a European arrest warrant, are liable to have on the right to liberty of the requested person, as guaranteed by Article 6 of the Charter, it seems to me essential that the national procedure leading to those measures may be reviewed by a court before that person is surrendered, at least at the first level of protection, that is to say, as regards the national arrest warrant on which the European arrest warrant is based.

86. It should be recalled that the principle of mutual recognition on which the European arrest warrant system is based is 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. [48]

87. It is also important to bear in mind that Article 1(3) of Framework Decision 2002/584 expressly provides that the 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 and reflected in the Charter, an obligation which moreover concerns all the Member States, in particular both the issuing and the executing Member States. [49]

88. Therefore, Framework Decision 2002/584 must be interpreted in conformity with Article 6 of the Charter, which provides that everyone has the right to liberty and security of person. [50]

89. Furthermore, it should be noted that, as the Court stated in its judgment of 30 May 2013, *F*, [51] as in extradition procedures, in the surrender procedure

48 See, inter alia, judgment in *MM* (paragraph 48 and the case-law cited).

49 See, inter alia, judgment of 12 February 2019, *TC* (C-492/18 PPU, EU:C:2019:108, paragraph 54 and the case-law cited).

50 See, inter alia, judgment of 12 February 2019, *TC* (C-492/18 PPU, EU:C:2019:108, paragraph 55 and the case-law cited). According to the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), 'the rights in Article 6 are the rights guaranteed by Article 5 of the [Convention for the Protection of Human Rights and Fundamental Freedoms (signed in Rome on 4 November 1950, 'the ECHR')], and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5'.

51 C-168/13 PPU, EU:C:2013:358.

established by that Framework Decision, the right to an effective remedy, set out in Article 13 of the ECHR and in Article 47 of the Charter, is of special importance. [52]

90. It also follows from the case-law of the European Court of Human Rights on Article 5(1)(f) of the ECHR, concerning extradition procedures, that only the conduct of such a procedure justifies the deprivation of a freedom based on that article. [53] In addition, Article 5(3) of the ECHR provides that 'everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power'. [54] Lastly, under Article 5(4) of the ECHR, everyone who is arrested or detained is entitled to have a court review whether the procedural and substantive requirements to be met to ensure that the deprivation of liberty is 'lawful', within the meaning of Article 5(1) of the ECHR, have been observed. [55]

91. According to the Commission, those safeguards must be considered to have been observed in the present case since, under Bulgarian law, a person subject to a European arrest warrant must be brought promptly before a court in the issuing Member State after his surrender to that State.

92. It is true that, if the situation is examined solely from a national standpoint, the person subject to a decision adopted by the public prosecutor on the basis of Article 64(2) of the NPK must be brought promptly before the court which will have to decide whether or not he should continue in detention pending trial.

93. However, the perspective changes when that national decision overlaps with a European arrest warrant. In such a situation, the judicial review in the issuing Member State to which such decisions of a public prosecutor must be subject, in so far as they are liable to impinge on the right to liberty guaranteed by Article 6 of the Charter, is necessarily deferred to a point in time after the surrender of the person concerned to that Member State.

94. I consider that since – as a result of the very mechanism of cooperation between judicial authorities embodied by the European arrest warrant, which requires some time in order for the procedure for executing the warrant to be completed – the requested person cannot be brought promptly before a court in the issuing Member State, and since the procedure for executing a European arrest warrant may result, in the circumstances set out in Article 12 of Framework

52 See judgment of 30 May 2013, *F* (C-168/13 PPU, EU:C:2013:358, paragraph 42).

53 See judgment of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraph 57 and the case-law of the European Court of Human Rights cited).

54 That provision precludes a person being deprived of his liberty without a prompt judicial review of his arrest and detention: see, by way of example, ECtHR, 4 December 2014, *Ali Samatar and Others v. France*, CE:ECHR:2014:1204JUD001711010.

55 See, inter alia, ECtHR, 7 July 2020, *Dimo Dimov and Others v. Bulgaria*, CE:ECHR:2020:0707JUD003004410, § 69.

Decision 2002/584, in the detention of that person in the executing Member State for a potentially long period, it is necessary to ensure, as a minimum requirement, that the national decision ordering the search for and arrest of a person, or his detention as in the present case, and which forms the basis for the issue by a public prosecutor of a European arrest warrant, is subject to judicial review when that decision is adopted, or, at the very least, to ensure that that decision may be challenged by way of proceedings brought by the person concerned before a court in the issuing Member State immediately upon his arrest in the executing Member State.

95. Where a national arrest warrant is adopted by a public prosecutor, as in the Bulgarian procedural system at the pre-trial stage of criminal proceedings, the requested person should thus be able, immediately upon his arrest in the executing Member State, to bring proceedings before a court in the issuing Member State so that that court can rule on the lawfulness of his arrest and detention under the law of that Member State, mirroring what would have happened had that person been brought before a court within the maximum period of 72 hours provided for in cases where a national arrest warrant is issued by the public prosecutor under Article 64(2) of the NPK. Otherwise, a whole facet of the lawfulness of the arrest and detention of the person concerned would escape judicial review prior to his surrender to the issuing Member State as the executing judicial authority does not have jurisdiction to rule on those matters.

96. In any event, it should always be possible for the national procedure leading to the issue of a European arrest warrant to be subject, at least at one of the two levels of protection of the requested person's rights, to judicial review before that person is surrendered to the issuing Member State, that is to say, before the European arrest warrant has exhausted most of its legal effects. [56]

97. I would add that the existence of procedural safeguards provided for in secondary EU law should, in my view, go hand in hand with the guarantee that each procedural system should provide for the possibility of judicial review of the national procedure leading to the issue of a European arrest warrant before the surrender of the person concerned.

98. I note, in that regard, that the Court has made clear that 'Framework Decision 2002/584 forms part of a comprehensive system of safeguards relating to effective judicial protection provided for by other EU rules, adopted in the field of judicial cooperation in criminal matters, which contribute to helping a person requested on the basis of a European arrest warrant to exercise his rights, *even before his surrender to the issuing Member State*'. [57]

[56] See judgment in *MM* (paragraph 77).

[57] See, inter alia, judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* (paragraph 72). Emphasis added.

99. In particular, Article 10 of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, [58] requires the competent authority of the executing Member State to inform the persons whose surrender is sought without undue delay after they have been deprived of their liberty that they have the right to appoint a lawyer in the issuing Member State. [59]

100. Under Article 10(4) of Directive 2013/48, 'the role of that lawyer in the issuing Member State is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision [2002/584]'. In my view, the lawyer's role, thus defined, encompasses the provision of information on the legal remedies available in the issuing Member State, with a view to having a court in that Member State review compliance with the conditions for issuing a European arrest warrant as well as the conformity with national law of the national decision on which that warrant is based.

101. Thus, the effectiveness of those provisions means, in my view, that it must be possible for a person arrested in the executing Member State to challenge before a court in the issuing Member State, prior to his surrender to that State, either the European arrest warrant or the national decision on which it is based, where neither of those two decisions was reviewed by a court when they were issued. However, it must be made clear that the act of bringing proceedings before a court in the issuing Member State should not adversely affect the conditions and time limits laid down in Framework Decision 2002/584 for the execution of such a warrant, to ensure compliance with the requirement that a European arrest warrant be executed speedily.

102. It follows from all those considerations that the Bulgarian procedure for issuing a European arrest warrant by a public prosecutor during the pre-trial stage of criminal proceedings does not, in my view, meet the requirements inherent in effective judicial protection.

V. Conclusion

103. In the light of all the foregoing, I propose that the Court answer the question referred for a preliminary ruling by Westminster Magistrates' Court (United Kingdom) as follows:

58 OJ 2013 L 294, p. 1.

59 See, inter alia, judgment in *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors of Lyons and Tours)* (paragraph 73).

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, is to be interpreted as meaning that the requirements inherent in effective judicial protection which must be afforded to a person subject to a European arrest warrant for the purposes of a criminal prosecution are not satisfied where, under the law of the issuing Member State, both the European arrest warrant and the national judicial decision on which it is based, first, are issued by an authority that, whilst participating in the administration of criminal justice in that Member State, is not itself a court, and, second, cannot be reviewed by a court in that Member State prior to the surrender of the person concerned.