



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

11 November 2021 \*

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2014/41/EU – European investigation order in criminal matters – Article 14 – Legal remedies – Charter of Fundamental Rights of the European Union – Article 47 – Absence of legal remedies in the issuing Member State – Decision ordering searches, seizures and a hearing of a witness by videoconference)

In Case C-852/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 7 November 2019, received at the Court on 21 November 2019, in the criminal proceedings brought against

**Ivan Gavanozov,**

THE COURT (First Chamber),

composed of L. Bay Larsen (Rapporteur), Vice-President of the Court, acting as President of the First Chamber, J.-C. Bonichot and M. Safjan, Judges,

Advocate General: M. Bobek,

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. Vlácil and T. Machovičová, acting as Agents,
- the French Government, by E. de Moustier, A. Daniel and N. Vincent, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by A. Giordano, avvocato dello Stato,
- the Austrian Government, by A. Posch, J. Schmoll and C. Leeb, acting as Agents,
- the European Commission, initially by I. Zaloguín and R. Troosters, and subsequently by I. Zaloguín and M. Wasmeier, acting as Agents,

\* Language of the case: Bulgarian.

after hearing the Opinion of the Advocate General at the sitting on 29 April 2021,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(4) and Article 14(1) to (4) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1) as well as Articles 7 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in criminal proceedings brought against Mr Ivan Gavanozov, who is accused of running an organised criminal group and of having committed tax offences.

### **Legal context**

#### ***Directive 2014/41***

- 3 Recitals 2, 6, 18, 19 and 22 of Directive 2014/41 are worded as follows:
  - '(2) Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), judicial cooperation in criminal matters in the Union is to be based on the principle of mutual recognition of judgments and judicial decisions, which is, since the Tampere European Council of 15 and 16 October 1999, commonly referred to as a cornerstone of judicial cooperation in criminal matters within the Union....
- (6) In the Stockholm Programme adopted by the European Council of 10-11 December 2009, the European Council considered that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued. The European Council indicated that the existing instruments in this area constituted a fragmentary regime and that a new approach was needed, based on the principle of mutual recognition, but also taking into account the flexibility of the traditional system of mutual legal assistance. The European Council therefore called for a comprehensive system to replace all the existing instruments in this area, including Framework Decision 2008/978/JHA, covering as far as possible all types of evidence, containing time limits for enforcement and limiting as far as possible the grounds for refusal.
...- (18) As in other mutual recognition instruments, this Directive does not have the effect of modifying the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union (TEU) and the Charter. In order to make this clear, a specific provision is inserted in the text.

(19) The creation of an area of freedom, security and justice within the Union is based on mutual confidence and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, that presumption is rebuttable. Consequently, if there are substantial grounds for believing that the execution of an investigative measure indicated in the [European investigation order (EIO)] would result in a breach of a fundamental right of the person concerned and that the executing State would disregard its obligations concerning the protection of fundamental rights recognised in the Charter, the execution of the EIO should be refused.

...

(22) Legal remedies available against an EIO should be at least equal to those available in a domestic case against the investigative measure concerned. In accordance with their national law Member States should ensure the applicability of such legal remedies, including by informing in due time any interested party about the possibilities and modalities for seeking those legal remedies. In cases where objections against the EIO are submitted by an interested party in the executing State in respect of the substantive reasons for issuing the EIO, it is advisable that information about such challenge be transmitted to the issuing authority and that the interested party be informed accordingly.'

4 Article 1 of that directive states:

'1. A European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State ("the issuing State") to have one or several specific investigative measure(s) carried out in another Member State ("the executing State") to obtain evidence in accordance with this Directive.

...

2. Member States shall execute an EIO on the basis of the principle of mutual recognition and in accordance with this Directive.

...

4. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.'

5 Article 4 of that directive provides:

'An EIO may be issued:

(a) with respect to criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State;

...'

6 Article 6(1) of that directive provides:

‘The issuing authority may only issue an EIO where the following conditions have been met:

- (a) the issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4 taking into account the rights of the suspected or accused person; and
- (b) the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.’

7 Under Article 9(1) of Directive 2014/41:

‘The executing authority shall recognise an EIO, transmitted in accordance with this Directive, without any further formality being required, and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in this Directive.’

8 Article 11(1) of that directive is worded as follows:

‘Without prejudice to Article 1(4), recognition or execution of an EIO may be refused in the executing State where:

...

- (f) there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing State’s obligations in accordance with Article 6 TEU and the Charter;

...’

9 Article 14 of that directive states:

‘1. Member States shall ensure that legal remedies equivalent to those available in a similar domestic case, are applicable to the investigative measures indicated in the EIO.

2. The substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.

3. Where it would not undermine the need to ensure confidentiality of an investigation under Article 19(1), the issuing authority and the executing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking the legal remedies when these become applicable and in due time to ensure that they can be exercised effectively.

4. Member States shall ensure that the time limits for seeking a legal remedy shall be the same as those that are provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.

...’

10 Article 24 of that directive provides:

‘1. Where a person is in the territory of the executing State and has to be heard as a witness or expert by the competent authorities of the issuing State, the issuing authority may issue an EIO in order to hear the witness or expert by videoconference or other audiovisual transmission in accordance with paragraphs 5 to 7.

...

7. Each Member State shall take the necessary measures to ensure that, where the person is being heard within its territory in accordance with this Article and refuses to testify when under an obligation to testify or does not testify the truth, its national law applies in the same way as if the hearing took place in a national procedure.’

***Bulgarian law***

11 Article 107(2) of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure, DV No 86 of 28 October 2005; ‘the NPK’), in the version applicable to the dispute in the main proceedings, provides:

‘The court shall obtain evidence at the request of the parties to the proceedings or of its own motion where such evidence is necessary in order to establish the objective truth.’

12 Under Article 117 of the NPK:

‘All facts which were witnessed and which may help to establish the objective truth may be established on the basis of witness testimony.’

13 Article 161(3) of the NPK is worded as follows:

‘Search and seizure measures in court proceedings shall be carried out on the orders of the court in which the proceedings are pending.’

14 Article 341(3) of the NPK states:

‘No other orders or directions shall be subject to review by the appellate court separate from the judgment.’

15 Article 6(1) of the Zakon za evropeyskata zapoved za razsledvane (Law on the European investigation order, DV No 16 of 20 February 2018) provides:

‘The competent authority in accordance with Article 5(1) shall issue a European investigation order following an individual assessment, on condition that:

1. A European investigation order is necessary and appropriate in light of the purpose of the criminal proceedings, taking account of the rights of the accused or the defendant.

2. The investigative and other procedural measures for which the European investigation order is issued could be carried out in a similar case under the same conditions under Bulgarian law.’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 16 Mr Gavanozov is being prosecuted in Bulgaria for involvement in an organised criminal group formed for the purpose of committing tax offences.
- 17 In particular, he is suspected of having imported sugar, via shell companies, into Bulgaria from other Member States, obtaining supplies from, inter alia, a company established in the Czech Republic and represented by Mr Y, and of subsequently having sold that sugar on the Bulgarian market without assessing or paying value added tax (VAT), by submitting incorrect documents according to which that sugar had been exported to Romania.
- 18 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) decided, on 11 May 2017, to issue an EIO requesting the Czech authorities to carry out searches and seizures at both the premises of the company established in the Czech Republic and the home of Mr Y, and to hear Mr Y as a witness by videoconference.
- 19 That court, following the adoption of that decision and referring to the difficulties in completing Section J of the form set out in Annex A to Directive 2014/41, entitled ‘Legal remedies’, has put questions to the Court of Justice regarding the interpretation of several provisions of that directive.
- 20 In the light of, in particular, the answer given by the referring court to a request for information sent to it by the Court, the Court held, in paragraph 38 of the judgment of 24 October 2019, *Gavanozov* (C-324/17, EU:C:2019:892), that Article 5(1) of Directive 2014/41, read in conjunction with Section J of the form referred to in Annex A to that directive, must be interpreted as meaning that the judicial authority of a Member State does not, when issuing an EIO, have to include in that section a description of the legal remedies, if any, which are provided for in its Member State against the issuing of such an order.
- 21 In its order for reference, the Spetsializiran nakazatelen sad (Specialised Criminal Court) states that Bulgarian law does not provide for any legal remedy against decisions ordering the carrying out of searches and seizures or the hearing of witnesses, or against the issuing of an EIO.
- 22 In that context, that court asks whether Bulgarian law is contrary to EU law and, in such a case, whether it may issue an EIO seeking such investigative measures.
- 23 In those circumstances the Spetsializiran nakazatelen sad (Specialised Criminal Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
  - ‘(1) Is national legislation which does not provide for any legal remedy against the issuing of [an EIO] for the search of residential and business premises, the seizure of certain items and the hearing of a witness compatible with Article 14(1) to (4), Article 1(4) and recitals 18 and 22 of Directive [2014/41] and with Articles 47 and 7 of the Charter, read in conjunction with Articles 13 and 8 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (“ECHR”)]?’
  - (2) Can [an EIO] be issued under those circumstances?’

## Consideration of the questions referred

### *The first question*

- 24 By its first question, the referring court asks, in essence, whether Article 1(4) and Article 14(1) to (4) of Directive 2014/41, read in the light of recitals 18 and 22 of that directive, and Articles 7 and 47 of the Charter, read in conjunction with Articles 8 and 13 ECHR, must be interpreted as precluding legislation of a Member State which has issued an EIO that does not provide for any legal remedy against the issuing of an EIO the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference.
- 25 Under Article 14(1) of Directive 2014/41, Member States must ensure that legal remedies equivalent to those available in a similar domestic case are applicable to the investigative measures indicated in the EIO.
- 26 While that provision, read in the light of recital 22 of that directive, imposes a general obligation on Member States to ensure that legal remedies at least equivalent to those available in a similar domestic case are applicable to the investigative measures indicated in the EIO (see, to that effect, judgment of 8 December 2020, *Staatsanwaltschaft Wien (Falsified transfer orders)*, C-584/19, EU:C:2020:1002, paragraph 60), it does not require Member States to provide additional legal remedies to those that exist in a similar domestic case.
- 27 Such a requirement is not apparent from the wording of Article 14(2) of that directive either, which merely clarifies that the substantive reasons for issuing an EIO may be challenged only in an action brought in the issuing Member State.
- 28 That said, it should be borne in mind that when the Member States implement EU law, they are required to ensure compliance with the right to an effective remedy enshrined in the first paragraph of Article 47 of the Charter, a provision which constitutes a reaffirmation of the principle of effective judicial protection (judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 43 and the case-law cited).
- 29 As the procedure for issuing and executing an EIO is governed by Directive 2014/41, it constitutes such an implementation of EU law within the meaning of Article 51(1) of the Charter, meaning that Article 47 of the Charter is applicable (see, by analogy, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 50 and the case-law cited).
- 30 The first paragraph of Article 47 of the Charter states that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article.
- 31 As regards, in the first place, the issuing of an EIO the purpose of which is the carrying out of searches and seizures, it must be noted that such measures constitute interferences with the right of every person to respect for his or her private and family life, home and communications, guaranteed by Article 7 of the Charter. Furthermore, the seizures are likely to infringe Article 17(1) of the Charter, which recognises the right of every person to own, use, dispose of and bequeath his or her lawfully acquired possessions.

- 32 Any person who wishes to rely on the protection conferred on him or her by those provisions in the context of proceedings relating to an EIO the purpose of which is the carrying out of searches and seizures must therefore be accorded the benefit of a right to an effective remedy guaranteed by Article 47 of the Charter.
- 33 That right necessarily means that the persons concerned by such investigative measures must have appropriate legal remedies enabling them, first, to contest the need for, and lawfulness of, those measures and, second, to request appropriate redress if those measures have been unlawfully ordered or carried out. It is for the Member States to provide in their national legal orders the legal remedies necessary for those purposes.
- 34 That interpretation of Article 47 of the Charter corresponds, furthermore, to that of Article 13 ECHR used by the [European Court of Human Rights ('the ECtHR')] in its case-law. It follows from the case-law of the ECtHR that, by virtue of Article 13 ECHR, which corresponds, in essence, to the first paragraph of Article 47 of the Charter, the persons concerned by searches and seizures must be able to access a procedure enabling them to contest the need for, and lawfulness of, the searches and seizures carried out and to obtain appropriate redress if those measures have been unlawfully ordered or carried out (see, to that effect, ECtHR, 22 May 2008, *Iliya Stefanov v. Bulgaria*, CE:ECHR:2008:0522JUD006575501, § 59; ECtHR, 31 March 2016, *Stoyanov and Others v. Bulgaria*, CE:ECHR:2016:0331JUD005538810, §§ 152 to 154; and ECtHR, 19 January 2017, *Posevini v. Bulgaria*, CE:ECHR:2017:0119JUD006363814, §§ 84 to 86).
- 35 Moreover, the right of the person concerned to contest the need for, and lawfulness of, those measures means that that person must have available to him or her a legal remedy against the EIO ordering that they be carried out.
- 36 In that regard, it should be noted that Article 1(1) of Directive 2014/41 defines the EIO as a judicial decision which has been issued or validated by a judicial authority of a Member State to have one or more specific investigative measure(s) carried out in another Member State to obtain evidence in accordance with that directive.
- 37 Under Article 1(2) of that directive, Member States are to execute an EIO on the basis of the principle of mutual recognition and in accordance with the provisions of that directive.
- 38 It is apparent, furthermore, from Article 9(1) of Directive 2014/41 that the executing authority must recognise an EIO, transmitted in accordance with that directive, without any further formality being required, and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing Member State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in that directive.
- 39 It follows from those factors that, in the context of proceedings relating to an EIO, investigative measures are to be ordered by the competent authority of the issuing Member State and are to be executed by the competent authorities of the executing Member State, which are, in principle, obliged to recognise an EIO transmitted in accordance with Directive 2014/41 without any further formality being required.
- 40 In addition, in accordance with Article 14(2) of Directive 2014/41, the substantive reasons for issuing an EIO may be challenged only in an action brought in the issuing Member State.



- 41 Therefore, in order for the persons concerned by the execution of an EIO issued or validated by a judicial authority of that Member State, the purpose of which is the carrying out of searches and seizures, to be able effectively to exercise their right guaranteed by Article 47 of the Charter, it is for that Member State to ensure that those persons have a remedy available to them before a court of the same Member State that enables them to contest the need for, and lawfulness of, that EIO, at the very least having regard to the substantive reasons for issuing such an EIO.
- 42 As regards, in the second place, the issuing of an EIO, the purpose of which is the hearing of a witness by videoconference, it must be pointed out that Article 24(1) of Directive 2014/41 provides that, where a person is in the territory of the executing Member State and has to be heard as a witness or expert by the competent authorities of the issuing Member State, the issuing authority may issue an EIO in order to hear the witness or expert by videoconference or other audiovisual transmission in accordance with Article 24(5) to (7) of that directive.
- 43 Article 24(7) of the directive states that each Member State is to take the necessary measures to ensure that, where the person is being heard within its territory in accordance with that article and refuses to testify when under an obligation to testify or does not testify the truth, its national law applies in the same way as if the hearing of that person took place in a national procedure.
- 44 It follows that the refusal to testify in the context of the execution of an EIO, the purpose of which is the hearing of a witness by videoconference, is likely to have significant consequences for the person concerned on the basis of the rules laid down for that purpose in the law of the executing Member State. In particular, that person could be required to appear at the hearing and be obliged to answer the questions raised in that context, failing which penalties could be imposed.
- 45 According to settled case-law, protection against arbitrary or disproportionate intervention by public authorities in the sphere of the private activities of any natural or legal person constitutes a general principle of EU law (judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 51 and the case-law cited).
- 46 The Court has stated that that protection may be relied on by any person as a right guaranteed by the law of the Union, for the purposes of the first paragraph of Article 47 of the Charter, in order to challenge before a court an act adversely affecting that person, such as an order to provide information or a penalty imposed on the ground of non-compliance with that order (see, to that effect, judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 58 and the case-law cited).
- 47 Accordingly, it must be held that the execution of an EIO, the purpose of which is the hearing of a witness by videoconference, is likely to adversely affect the person concerned and that that person must therefore have a legal remedy available to him or her against such a decision, in accordance with Article 47 of the Charter.
- 48 The courts of the executing Member State will not have jurisdiction, in accordance with Article 14(2) of Directive 2014/41, to examine the substantive reasons for an EIO ordering the hearing of a witness by videoconference.

- 49 It follows that it is for the issuing Member State to ensure that any person who has been subject to an obligation to present himself or herself for the purpose of being heard as a witness or to answer questions put to him or her during such a hearing in the context of the execution of an EIO has a remedy available to him or her before a court of that Member State enabling him or her to challenge, at the very least, the substantive reasons for issuing such an EIO.
- 50 In the light of the foregoing considerations, the answer to the first question is that Article 14 of Directive 2014/41, read in conjunction with Article 24(7) of that directive and Article 47 of the Charter, must be interpreted as precluding legislation of a Member State which has issued an EIO that does not provide for any legal remedy against the issuing of an EIO, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference.

### *The second question*

- 51 By its second question, the referring court asks, in essence, whether Article 1(4) and Article 14(1) to (4) of Directive 2014/41, read in the light of recitals 18 and 22 of that directive, as well as Articles 7 and 47 of the Charter, read in conjunction with Articles 8 and 13 ECHR, must be interpreted as precluding the issuing, by the competent authority of a Member State, of an EIO, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference, where the legislation of that Member State does not provide any legal remedy against the issuing of such an EIO.
- 52 Article 6(1) of Directive 2014/41 makes the issuing of an EIO subject to two conditions. First, the issuing [of an EIO] must be necessary and proportionate for the purpose of the procedures referred to in Article 4 of that directive, taking into account the rights of the suspected or accused person. Second, the investigative measure(s) indicated in the EIO must be capable of being ordered under the same conditions in a similar domestic case.
- 53 It is true that that provision does not mention the taking into account, when issuing an EIO, of the rights of persons concerned by the investigative measures indicated in that EIO other than the suspected or accused person.
- 54 It should be noted, however, that it follows, in particular, from recitals 2, 6 and 19 of that directive that the EIO is an instrument falling within the scope of judicial cooperation in criminal matters referred to in Article 82(1) TFEU, which is based on the principle of mutual recognition of judgments and judicial decisions. That principle, which constitutes the ‘cornerstone’ of judicial cooperation in criminal matters, is itself based on mutual trust and on the rebuttable presumption of compliance by other Member States with Union law and, in particular, with fundamental rights (see, to that effect, judgment of 8 December 2020, *Staatsanwaltschaft Wien (Falsified transfer orders)*, C-584/19, EU:C:2020:1002, paragraph 40).
- 55 In the context of proceedings relating to an EIO, observance of those rights thus falls, primarily, within the responsibility of the issuing Member State, which must be presumed to be complying with Union law and, in particular, with the fundamental rights conferred by that law (see, by analogy, judgment of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 50).
- 56 However, the fact that it is impossible to contest, in the issuing Member State, the need for, and lawfulness of, an EIO, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference, at the very least in the light of the substantive reasons

for issuing that EIO, constitutes an infringement of the right to an effective remedy, enshrined in Article 47 of the Charter, such as to rule out the possibility of mutual recognition being implemented and benefiting that Member State.

- 57 Moreover, it should be borne in mind that it is for Member States, inter alia pursuant to the principle of sincere cooperation referred to in the first subparagraph of Article 4(3) TEU, to ensure in their respective territories the application of and respect for EU law, and to take for those purposes any appropriate measure, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union (see, to that effect, judgment of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 34 and the case-law cited).
- 58 Therefore, in the light, in particular, of the essential role of the principle of mutual recognition in the system established by Directive 2014/41, it is for the issuing Member State to create the conditions under which the executing authority may usefully grant its assistance in accordance with EU law.
- 59 Furthermore, as is apparent from paragraph 43 of the present judgment, Directive 2014/41 is based on the principle that EIOs are to be executed. Article 11(1)(f) of that directive permits the executing authorities to derogate from that principle, exceptionally, following an assessment on a case-by-case basis, where there are substantial grounds to believe that the execution of an EIO would be incompatible with the fundamental rights guaranteed, in particular, by the Charter. However, in the absence of any legal remedy in the issuing State, the application of that provision would become automatic. Such a consequence would be contrary both to the general scheme of Directive 2014/41 and to the principle of mutual trust.
- 60 Therefore, as the Advocate General noted in points 81 to 84 of his Opinion, the issuing of an EIO in respect of which there are substantial grounds to believe that execution would lead to an infringement of Article 47 of the Charter and the execution of which should therefore be refused by the executing Member State in accordance with Article 11(1)(f) of that directive, is not compatible with the principles of mutual trust and sincere cooperation.
- 61 As can be seen from the examination of the first question, the execution of an EIO, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference, the lawfulness of which cannot be contested before a court of the issuing Member State, is such as to entail an infringement of the right to an effective remedy enshrined in the first paragraph of Article 47 of the Charter.
- 62 In the light of all the foregoing considerations, the answer to the second question is that Article 6 of Directive 2014/41, read in conjunction with Article 47 of the Charter and Article 4(3) TEU, must be interpreted as precluding the issuing, by the competent authority of a Member State, of an EIO, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference, where the legislation of that Member State does not provide any legal remedy against the issuing of such an EIO.

## Costs

- 63 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 (First Chamber) hereby rules:

- 1. Article 14 of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, read in conjunction with Article 24(7) of that directive and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding legislation of a Member State which has issued a European investigation order that does not provide for any legal remedy against the issuing of a European investigation order, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference.**
- 2. Article 6 of Directive 2014/41, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and Article 4(3) of the Treaty on European Union, must be interpreted as precluding the issuing, by the competent authority of a Member State, of a European investigation order, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference, where the legislation of that Member State does not provide any legal remedy against the issuing of such a European investigation order.**

[Signatures]