



Court of Justice of the European Union

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Judgments in Joined Cases C-508/18
OG (Public Prosecutor's office of Lübeck) and C-82/19 PPU PI (Public
Prosecutor's office of Zwickau)
and in Case C-509/18 PF (Prosecutor General of Lithuania)

Press and Information

German public prosecutor's offices do not provide a sufficient guarantee of independence from the executive for the purposes of issuing a European arrest warrant

The Prosecutor General of Lithuania does, however, provide such a guarantee of independence

Two Lithuanian nationals and one Romanian national are challenging, before the Irish courts, the execution of European arrest warrants issued by German public prosecutor's offices and the Prosecutor General of Lithuania for the purposes of criminal prosecution. They are accused of crimes described as murder and grievous bodily injury (OG), armed robbery (PF) and organised or armed robbery (PI).

The three people concerned claim that the German public prosecutor's offices and the Prosecutor General of Lithuania are not competent to issue a European arrest warrant on the ground that none is a 'judicial authority' within the meaning of the framework decision on the European arrest warrant¹. OG and PI claim, inter alia, that the German public prosecutor's offices are not independent of the executive since they are part of an administrative hierarchy headed by the Minister for Justice, so that there is a risk of political involvement.

The Supreme Court (Ireland) and the High Court (Ireland) ask, in that context, the Court of Justice for an interpretation of that framework decision. In light of the fact that PI is, on the basis of the European arrest warrant issued in respect of him, in custody in Ireland, the Court of Justice acceded to the High Court's request that the case be dealt with under the urgent preliminary ruling procedure.

In today's judgments, **the Court of Justice holds that the concept of an 'issuing judicial authority', within the meaning of the framework decision, does not include public prosecutor's offices of a Member State, such as those of Germany, which are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue a European arrest warrant.**

However, that concept includes the Prosecutor General of a Member State, such as that of Lithuania, who, whilst institutionally independent of the judiciary, is responsible for the conduct of criminal prosecutions and whose legal position affords him a guarantee of independence from the executive in connection with the issuing of a European arrest warrant.

The Court notes, first of all, that the European arrest warrant is the first concrete measure in the field of criminal law implementing the principle of mutual recognition, which is itself based on the principle of mutual trust between the Member States. Both principles are of fundamental importance given that they allow an area without internal borders to be created and maintained.

¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

The principle of mutual recognition proceeds from the assumption that only European arrest warrants which meet the requirements of the framework decision must be executed. Thus, since a European arrest warrant is a 'judicial decision', it must, in particular, be issued by a 'judicial authority'.

Although, in accordance with the principle of procedural autonomy, the Member States may designate, in their national law, the 'judicial authority' with the competence to issue a European arrest warrant, the meaning and scope of that term cannot be left to the assessment of each Member State, but must be the same throughout the EU.

It is true that the concept of a 'judicial authority' is not limited to designating only the judges or courts of a Member State, but must be construed as designating, more broadly, the authorities participating in the administration of criminal justice in that Member State, as distinct from, inter alia, ministries or police services which are part of the executive.

According to the Court, both the German public prosecutor's offices and the Prosecutor General of Lithuania, which have an essential role in the conduct of criminal proceedings, are capable of being regarded as participating in the administration of criminal justice.

However, **the authority responsible for issuing a European arrest warrant must act independently in the execution of its functions, even where that arrest warrant is based on a national arrest warrant issued by a judge or a court.** It must, in that capacity, be capable of exercising its functions objectively, taking into account all incriminatory and exculpatory evidence, without being exposed to the risk that its decision-making power be subject to external directions or instructions, in particular from the executive, so that it is beyond doubt that the decision to issue a European arrest warrant lies with that authority and not, ultimately, with the executive.

As regards the public prosecutor's offices in Germany, the Court finds that legislation does not preclude their decisions to issue a European arrest warrant from being subject, in a given case, to an instruction from the Minister for Justice of the relevant *Land*. Accordingly, those public prosecutor's offices do not appear to meet one of the requirements of being regarded as an 'issuing judicial authority', within the meaning of the framework decision, namely the requirement of providing the judicial authority responsible for execution of an European arrest warrant with the guarantee that they act independently in issuing it.

Nevertheless, it appears that the Prosecutor General of Lithuania may be considered to be an 'issuing judicial authority', within the meaning of the framework decision, in so far as his legal position in that Member State safeguards not only the objectivity of his role, but also affords him a guarantee of independence from the executive in connection with the issuing of a European arrest warrant. However, it cannot be ascertained from the information in the case file before the Court whether a decision of the Prosecutor General of Lithuania to issue a European arrest warrant may be the subject of court proceedings which meet in full the requirements inherent in effective judicial protection, which it is for the Supreme Court to determine.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the judgments [C-508/18 & C-82/19](#) & [C-509/18](#) are published on the CURIA website on the day of delivery.

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