



Court of Justice of the European Union

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Press and Information

Advocate General's Opinion in Joined Cases C-556/19 PPU Parquet général du Grand-Duché de Luxembourg and C-626/19 PPU Openbaar Ministerie and in Cases C-625/19 PPU and C-627/19 PPU Openbaar Ministerie

**Advocate General Campos Sánchez-Bordona: the judicial authority which issues a European arrest warrant must be fully independent and must not be subject to hierarchical constraints or to orders or instructions**

*Further, European arrest warrants must be capable of being the subject of court proceedings in the issuing Member State without having to wait until the person requested is surrendered*

In May of this year, the Court of Justice delivered two judgments in three preliminary-ruling cases<sup>1</sup> which, in essence, raised the **issue of whether the Public Prosecutor's Offices of the Member States could be regarded as an 'issuing judicial authority' within the meaning of the Framework Decision on the European arrest warrant ('EAW')**.<sup>2</sup> The cases in question concerned more specifically the German Public Prosecutor's Offices and the Prosecutor General of Lithuania, respectively. **The Court drew a distinction between the German Public Prosecutor's Offices** – finding that they were not included in the concept of an 'issuing judicial authority' since they were exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, in connection with the adoption of a decision to issue an EAW – **and the Prosecutor General of Lithuania** – who was considered to be an 'issuing judicial authority' because he has a legal position which affords him a guarantee of independence from the executive.

The Court has received two requests for a preliminary ruling, from courts in Luxembourg (Case C-566/19 PPU) and the Netherlands (Case C-626/19 PPU) which are **uncertain as to whether the French Public Prosecutor's Office may be regarded as an 'issuing judicial authority'**. The same uncertainty has been raised by Netherlands courts in respect of the **Public Prosecutor's Offices of Sweden** (Case C-625/19 PPU) **and Belgium** (Case C-627/19 PPU). In the first three cases, the EAWs were issued for the purposes of conducting criminal prosecutions against three individuals, and in the last case, in order to enforce a term of imprisonment, imposed by a final judgment.

In today's Opinions, in answer to a question referred by the Cour d'appel (Chambre du conseil) (Court of Appeal, Investigation Chamber, Luxembourg) as to whether the French Public Prosecutor's Office satisfies the requirement of independence to which authorities issuing EAWs are subject, Advocate General Manuel Campos Sánchez-Bordona highlights two problems: first, the fact that, although since 2014 the French Public Prosecutor's Office is no longer subject to potential instructions from the executive *in specific cases*, the Ministry of Justice may continue to issue general instructions to it. Secondly, the hierarchical structure characteristic of the public prosecutor's offices means that their members are subordinate to their hierarchical superiors. In the judgments delivered in May, the Court held that the possibility of exposure to any instructions from the executive *in specific cases* was the key factor in assessing the independence of the Public Prosecutor's Office as an issuing judicial authority. Following the approach set out by the

<sup>1</sup> Joined Cases [C-508/18](#) OG (Public Prosecutor's Office in Lübeck) and [C-82/19 PPU](#) PI (Public Prosecutor's Office in Zwickau), and Case [C-509/18](#) PF (Prosecutor General of Lithuania); see Press Release No. [68/19](#).

<sup>2</sup> 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).

Court of Justice in a judgment of July 2018,<sup>3</sup> the Advocate General considers that the independence of the judicial authority issuing the EAW presupposes that that authority exercises its functions wholly autonomously, *without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever*. Consequently, **it must not receive either specific or general instructions**, and must be subject only to the law, free from hierarchical constraints or subordination. In that regard, he observes that the Prosecutor General of Lithuania could be classified as an ‘issuing judicial authority’ because he enjoyed a constitutional status affording him a guarantee of independence from the executive in the issue of an EAW. In France, on the other hand, there is no equivalent constitutional guarantee. Accordingly, the Advocate General considers that **a public prosecutor’s office cannot be regarded as an ‘issuing judicial authority’ if, when adjudicating on an EAW, its members must comply with general instructions on criminal justice policy, issued by the Minister for Justice, which are binding in relation to such warrants and with instructions issued to them by their hierarchical superiors.**

For its part, the rechtbank Amsterdam (District Court, Amsterdam, the Netherlands) is uncertain whether in the cases of the French Public Prosecutor’s Office (Case C-626/19 PPU) and Swedish Public Prosecutor’s Office (Case C-625/19 PPU) the requirement laid down in the judgment on the German Public Prosecutor’s Offices that there must be the possibility of bringing court proceedings against the decision of an authority which — participating in the administration of justice without being a judge or court — issues an EAW, is fulfilled. The Advocate General observes that the Framework Decision establishes a system of protection on two levels. At a first level of protection, the EAW issued by a public prosecutor must be based on a national arrest warrant (‘NAW’) issued by a judicial authority in the strict sense. The Advocate General explains that **the possibility of bringing court proceedings against the aforementioned decision to issue the EAW — which is the second level of protection — is not a condition which a public prosecutor’s office must fulfil in order to be capable of being classified as an ‘issuing judicial authority’, but is a condition relating to the lawfulness of the issuing of an EAW by a public prosecutor’s office and, therefore, to its effectiveness.** In answer to another question from the Amsterdam District Court, Mr Campos Sánchez-Bordona adds that those court proceedings cannot be replaced by the judicial review to which the NAW is subject. The court proceedings may relate only to an EAW which has already been issued. The judgment on the German Public Prosecutor’s Offices does not address the question of whether those court proceedings must be capable of being brought in the Member State issuing the EAW before that warrant is executed or after the requested person is actually surrendered. The Advocate General observes that proceedings brought after the requested person has been surrendered will enable that person to obtain judicial protection, albeit less extensive than that which he would have been able to enjoy if he had had the opportunity to challenge the decision to issue the EAW in order to avert the harm inherent in the execution of that warrant (in particular, the deprivation of liberty). Accordingly, the Advocate General proposes that the answer provided to the District Court, Amsterdam should be that **a person requested under an EAW issued by a public prosecutor’s office in a Member State which participates in the administration of justice and has a guaranteed independent status must be able to challenge that warrant before a judge or court in that State, without having to wait until he is surrendered, as soon as the warrant has been issued (unless this would jeopardise the criminal proceedings) or notified to him.**

Mr Campos Sánchez-Bordona makes clear, however, that **this does not mean adding a new ground for refusing to execute EAWs issued by the public prosecutor’s office, where there is nothing to indicate to the executing judicial authority that the EAWs are capable of being the subject of court proceedings in the issuing Member State.** It should fall to the courts of the issuing Member State themselves, once an EAW has been executed, to determine the appropriate conclusions to be drawn from the fact that the EAW cannot be challenged under their own national legislation.

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<sup>3</sup> Case: [C-216/18 PPU](#) Minister for Justice and Equality (Deficiencies in the system of justice), see Press Release No. [113/18](#)).

In the final case (Case C-627/19 PPU), the Amsterdam District Court expressed uncertainty as to whether the Belgian Public Prosecutor's Office could be considered an 'issuing judicial authority' as regards EAWs issued for the purposes of enforcing a custodial sentence imposed by a final judgment. The Advocate General considers that, as in the case of EAWs issued in order to conduct a criminal prosecution, the examination of whether the requirements for issuing an EAW seeking to enforce a judgment — the EAW having been adopted by a public prosecutor who may be regarded as an 'issuing judicial authority' — have been satisfied may take place before the EAW is issued, but **this does not exclude the requested person's right to bring court proceedings to challenge the EAW once it has been issued**. An EAW does not have to follow inevitably from a conviction, but the sentencing court (or any other competent court), as the court to which it falls to ensure effective judicial protection, must decide on the basis of the criterion of **proportionality** whether it will approach the executing Member State for the surrender of the convicted person, or whether it will elect not to do so. For those purposes, regard must be had to factors such as the length of time for which it is likely that the individual will be held in custody while the executing Member State processes the EAW, and also the effects which the surrender and transfer procedure may have on a person's social and family relationships. Consequently, the Advocate General considers that **EAWs issued by a public prosecutor's office for the purposes of enforcing a custodial sentence imposed by a final judgment must be capable of being the subject of court proceedings similar to those that apply in the case of EAWs issued for the purposes of conducting a criminal prosecution**.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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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*Unofficial document for media use, not binding on the Court of Justice.*

*The full text of the Opinion in Cases [C-566/19 PPU](#) and [C-626/19 PPU](#) and in Cases [C-625/19 PPU](#) and [C-627/19 PPU](#) is published on the CURIA website on the day of delivery.*

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