



Press and Information

Court of Justice of the European Union
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Judgment in Case C-510/19
Openbaar Ministerie and YU and ZV v AZ

Public prosecutors in the Netherlands do not constitute an ‘executing judicial authority’ in connection with the execution of a European arrest warrant, given that they may be subject to instructions in specific cases from the Netherlands Minister for Justice

In September 2017, a European arrest warrant (‘EAW’) was issued by a Belgian investigating judge against AZ, a Belgian national, who was accused of forgery of documents, use of forged documents and fraud. In December 2017, AZ was arrested in the Netherlands and surrendered to the Belgian authorities pursuant to a decision of the rechtbank Amsterdam (District Court, Amsterdam, Netherlands). In January 2018, the investigating judge which issued the EAW issued an additional EAW for acts other than those for which AZ had been surrendered, thus requesting the competent Netherlands authorities to disapply the rule of speciality provided for by the Framework Decision on the EAW.¹ According to that rule, a person surrendered to the issuing Member State pursuant to an EAW may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered, unless the executing judicial authority has given its consent.² In February 2018, the officier van justitie (public prosecutor) for the arrondissementsparket Amsterdam (Public Prosecutor’s Office for the Amsterdam District, Netherlands) gave his consent to extend the scope of the prosecution in accordance with the additional EAW. In Belgium, AZ was thus prosecuted in respect of the acts referred to in the initial EAW and the additional EAW and sentenced to a three-year prison term.

It is in this context that the hof van beroep te Brussel (Court of Appeal, Brussels, Belgium), before which AZ has brought an appeal against his criminal conviction, raises the issue of whether the Public Prosecutor for the Amsterdam District may be considered to be an ‘executing judicial authority’ within the meaning of the Framework Decision on the EAW,³ and consequently to have the power to give the consent provided for by that Framework Decision.

Recently, the Court has ruled on several occasions on the concept of ‘judicial authority’ in the context of the Framework Decision on the EAW and, more specifically, on the issue of whether Member States’ public prosecutors may be regarded as falling within the scope of that concept. It has thus found that such was the case of the Lithuanian, French, Swedish and Belgian public prosecutors’ offices,⁴ but not of the German public prosecutor’s office.⁵ Although all of those

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).

² Article 27(2), 27(3)(g) and 27(4) of the Framework Decision on the EAW.

³ The concept ‘executing judicial authority’ is defined in Article 6(2) of the Framework Decision on the EAW.

⁴ See, respectively, the judgments of 27 May 2019, *PF (Prosecutor General of Lithuania)*, [C-509/18](#), (see also PR No [68/19](#)); of 12 December 2019, *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie (Public Prosecutors’ Offices, Lyons and Tours)*, [C-566/19 PPU](#) and [C-626/19 PPU](#); of 12 December 2019, *Openbaar Ministerie (Swedish Public Prosecutor’s Office)*, [C-625/19 PPU](#); and of 12 December 2019, *Openbaar Ministerie (Public Prosecutor, Brussels)*, [C-627/19 PPU](#) (see also [PR No 156/19](#)).

⁵ See judgment of 27 May 2019, *OG and PI (Public Prosecutor’s Office in Lübeck and Zwickau)*, [C-508/18](#) and [C-82/19 PPU](#) (see also [PR No 68/19](#)).

cases concerned the concept of 'issuing judicial authority' of an EAW ⁶ and not that of 'executing judicial authority', in the present judgment, delivered by the Grand Chamber, the Court considers that its case-law in that field can be transposed.

Findings of the Court

In the first place, the Court states that, like the concept of 'issuing judicial authority', the concept of 'executing judicial authority' is an autonomous concept of EU law and is not restricted to designating judges or courts. That concept also covers the judicial authorities which participate in the administration of criminal justice in that Member State, which act independently in the exercise of the responsibilities inherent in the execution of an EAW, in particular in relation to the executive, and which exercise their responsibilities under a procedure which complies with the requirements inherent in effective judicial protection.

Thus, to determine the content of the concept of 'executing judicial authority', the Court upholds the same criteria as those developed in its case-law in relation to 'issuing judicial authorities', which it justifies by the fact that the status and nature of those two judicial authorities are identical, although they exercise separate functions. The Court makes several observations to reach that conclusion. It points out that the decision on the execution of an EAW, like that on the issue of an EAW, must be taken by a judicial authority that meets the requirements inherent in effective judicial protection, including the guarantee of independence. In addition, the Court finds that the execution of an EAW is, just as the issue of an EAW, capable of prejudicing the liberty of the requested person in so far as that execution will lead to his or her arrest with a view to his or her surrender. Moreover, the Court adds that, unlike the procedure for the issue of an EAW, for which there is a dual level of protection of fundamental rights, at the stage of the execution of the EAW, the intervention of the executing judicial authority constitutes the sole level of protection provided for by the Framework Decision on the EAW allowing the requested person to enjoy all the guarantees appropriate to the adoption of judicial decisions.

In the second place, the Court holds that, irrespective of whether the judicial authority which gives its consent for the purposes of disapplying the rule of speciality must be the same as that which executed the EAW, that consent cannot be given by the public prosecutor of a Member State who, although he or she participates in the administration of justice, may receive in exercising his or her decision-making power an instruction in a specific case from the executive. Such a public prosecutor does not satisfy the necessary conditions to be characterised as an 'executing judicial authority'. According to the Court, to give the consent concerned and thus to disapply the rule of speciality, the intervention of an authority which satisfies those conditions is required. That decision is distinct from that relating to the execution of an EAW and leads, for the person concerned, to effects distinct from those of the latter decision. The Court observes in particular that, even if the person has already been surrendered to the issuing judicial authority, inasmuch as the consent requested concerns an offence other than that for which he or she was surrendered, it is liable to prejudice the liberty of the person concerned since it may lead to a heavier sentence.

The Court observes that, in the present case, under Netherlands law, although the decision to execute the EAW is taken ultimately by a court, by contrast, the decision to grant the consent is taken exclusively by the public prosecutor. Since the latter may receive instructions in specific cases from the Netherlands Minister for Justice, he or she does not constitute an 'executing judicial authority'.

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.

⁶ The concept 'issuing judicial authority' is defined in Article 6(1) of the Framework Decision on the EAW.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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