ERA
Academy of European Law

YOUNG LAWYERS CONTEST 2020

220DT36 Trier, 13-14 Februrary 2020

Table of content

With the support of the Justice Programme 2014-2020 of the European Union

Dear guests,

We are pleased to welcome you to the
"Young Lawyers Contest 2020 ".
Your contact person is Nathalie Dessert.
Marlene Dietsch at the reception desk on the ground floor in "Building A" is also available to assist you.

We wish you a successful event and a pleasant stay in the ERA Congress Centre!

Forence Hartmann-Vareilles

Europäische Rechtsakademie
Academy of European Law
Académie de Droit Européen
Accademia di Diritto Europeo





Library

The ERA library on the ground floor, which is a European Documentation Centre, will be open throughout your stay in the ERA Conference Centre. Daily newspapers in English, French and German are also available.

WiFi

During the event, our WiFi system is available for participants free of charge. If you do not have your own WiFi compatible equipment, there are computers with internet access in the library.

Printer

A printer is available in the foyer. You may print directly from your computer.

Coffee breaks / lunch

Coffee will be available in the foyer of the main conference room.

For lunch times, please consult the "Young Lawyers Contest Programme".

Dinner

Dinner on 13. February will be at 19h30 at the "Brasserie" Fleischstr. 12, 54290 Trier.

Shuttle Service

The taxi service "Finkelgruens Taxi" provides transport to Luxembourg airport and railway station, as well as to Frankfurt Hahn airport. Please contact the check-in desk and the booking will be made for you.

Bus connections

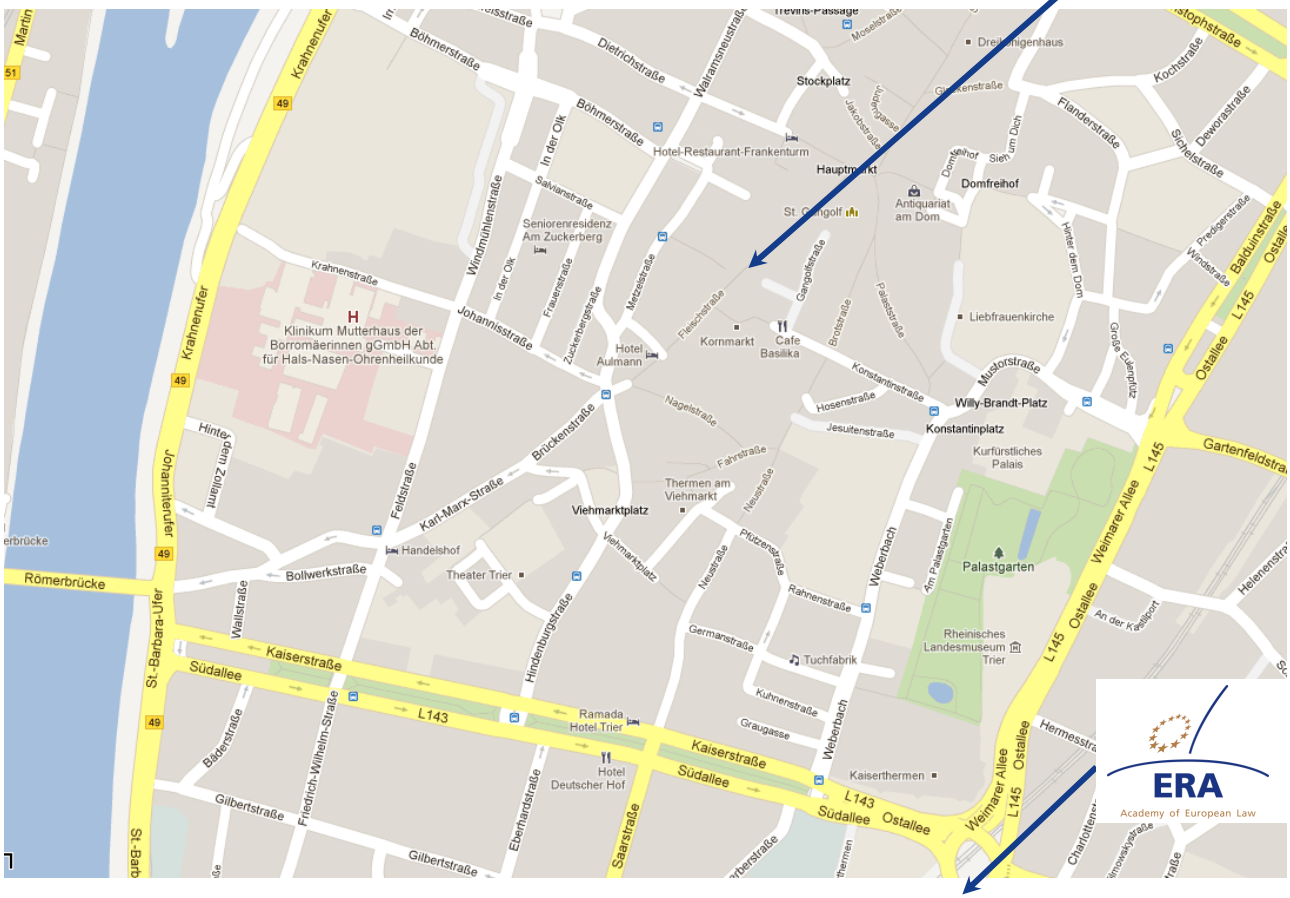
Bus route 8 (or 82) will take you into town (bus stop "Treveris"). For onward travel to the main station change to bus number 3 (or 83) or number 40.

Thursday, 13 February 2020

Today's evening programme:

19:30 Dinner at the restaurant "BRASSERIE"

BRASSERIE
FLEISCHSTRAßE 12
54290 TRIER



YOUNG LAWYERS CONTEST 2020

Final list of Candidates

1.	Linas Mockevicius (LIT)
2.	Olga Vinieri (GRC)
3.	Maja Karczewska (POL)
4.	Elisabeth Dewulf (BEL)
5.	Sven Cordes (GER)
6.	Andrew Clarke (IRL)
7.	Jana Brezovicova (SVK)
8.	Clement Claesens (BEL)
9.	Maryna Kapustina (SLO)
10.	Sofia Stigmar (SWE)
11.	Gierada Adam (POL)
12.	Quentin Pelletier (FRA)
13.	Andrei Diaconescu (ROU)
14.	Miguela Caldeira (PRT)
15.	Olivia Vansteelant (BEL)
16.	Anu Vuori (FIN)
17.	Ognyan Yankov (BGR)
18.	Jaroslaw Pogorzelski (POL)
19.	Andrea Sorge (ITA)
20.	Jakub Zabraniak (POL)
21.	Päivi Heinonen (FIN)
22.	Cristina Valcauan (ROU)
23.	Sarah Emmes (GER)
24.	Manon Ombredane (BEL)
25.	Tudor Grigorean (ROU)
26.	Roskana Maria Strubel (POL)
27.	Patricia Scholczova (SVK)
28.	Oonagh O'Sullivan (IRL)
29.	Nelson Briou (BEL)
30.	Marek Ballaun (POL)
31.	Milos Pupik (CZE)

Composition of the teams

TEAMS	MEMBERS	AREA OF EU LAW FOR THE WRITTEN REPORT
Team 1	Linas Mockevicius (LIT) Olga Vinieri (GRC) Maja Karczewska (POL)	Data Protection & Fundamental rights
Team 2	Elisabeth Dewulf (BEL) Sven Cordes (GER) Andrew Clarke (IRL) Jana Brezovicova (SVK)	Criminal Law & Public Procurement
Team 3	Clement Claesens (BEL) Maryna Kapustina (SLO)	Data Protection & Fundamental Rights

	Sofia Stigmar (SWE) Gierada Adam (POL)	
Team 4	Quentin Pelletier (FRA) Andrei Diaconescu (ROU) Miguela Caldeira (PRT)	Data Protection & Fundamental Rights
Team 5	Olivia Vansteelant (BEL) Anu Vuori (FIN) Ognyan Yankov (BGR)	Criminal Law & Public Procurement
Team 6	Jaroslaw Pogorzelski (POL) Andrea Sorge (ITA)	Data Protection & Fundamental Rights
Team 7	Jakub Zabraniak (POL) Päivi Heinonen (FIN) Cristina Valcauan (ROU)	Criminal Law & Public Procurement
Team 8	Sarah Emmes (GER) Manon Ombredane (BEL) Tudor Grigorean (ROU)	Data Protection & Fundamental Rights
Team 9	Roskana Maria Strubel (POL) Patricia Scholczova (SVK) Oonagh O'Sullivan (IRL)	Criminal Law & Public Procurement
Team 10	Nelson Briou (BEL) Marek Ballaun (POL) Milos Pupik (CZE)	Criminal Law & Public Procurement

Topics for the Young Lawyers Contest 2019-2020

One topic to be chosen among the following two questions

Question 1: *How would prior criminal records of applicants in a public procurement procedure need to be taken into account in light of the diversity in criminal law provisions and the equal treatment principle – generally enshrined in European Union law and specifically applicable in public procurement procedures?*

Because the scope of the offences varies between member states, it is possible to convict someone in one member state for behavior that is not an offence in another member state. The European courts have consistently held that the difference in criminalization is not a problem, because there is no rule or legal basis that says that there needs to be equal treatment between citizens on that level.
However, things might change if you use those different convictions in a procedure which does require equal treatment. Public procurement procedures are an example thereof. According to the public procurement directive (2014/24/EU) you need to treat all candidates equal (see clause 90) and you cannot contract with a candidate that has been convicted for the listed offences (see Art. 57). The list included refers to specific types of offences that may be expected to be criminalized in all EU member states. Would it be possible to extent this list to include other convictions? Would it be possible to exclude candidates for a form of corruption e.g. beyond what is included in the listed convention? Or would the equal treatment principle not allow that? How can a contracting authority take account of those prior convictions given the diversity in criminal law whilst still ensuring equal treatment of the candidates?

Question 2:

"The Working Party recognizes that the concrete application of the concepts of data controller and data processor is becoming increasingly complex. This is mostly due to the increasing complexity of the environment in which these concepts are used, and in particular due to a growing tendency, both in the private and in the public sector, towards organisational differentiation, in combination with the development of ICT and globalisation, in a way that may give rise to new and difficult issues and may sometimes result in a lower level of protection afforded to data subjects." [Opinion 1/2010 of the Article 29 Data Protection Working Party]

Provide a critical legal analysis of how this complexity has been addressed in case-law of the CJEU concerning the concept of "controller". In circumstances of joint controllership, is the legal framework for distribution of responsibilities between controllers (as it arises from the General Data Protection Regulation and case-law of the CJEU) sufficiently clear and is it capable of ensuring complete protection of the rights of data subjects?

Provisional text

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 26 November 2019 (1)

Joined Cases C-566/19 PPU and C-626/19 PPU

Parquet général du Grand-Duché de Luxembourg
v
JR

(Request for a preliminary ruling from the Cour d'appel (Chambre du conseil) (Court of Appeal (Investigation Chamber), Luxembourg))
and
Openbaar Ministerie
v
YC

(Request for a preliminary ruling from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands))

(Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Issuing judicial authority — Independence of the public prosecutor's office — European arrest warrant issued by a French public prosecutor — Public prosecutor's office responsible both for conducting a criminal prosecution and for reviewing the conditions of issue and proportionality of a European arrest warrant — Condition as to the existence of an effective judicial remedy against the decision to issue a European arrest warrant granted by a public prosecutor)

1. The Court of Justice is again faced with references for a preliminary ruling in which it will have to adjudicate on whether a public prosecutor's office (in this case, in the French Republic) can be regarded as the 'issuing judicial authority' for a European arrest warrant (EAW), within the meaning of Article 6(1) of Framework Decision 2002/584/JHA. (2)

2. The doubts raised by a court in Luxembourg (Case C-566/19 PPU) and another court in the Netherlands (Case C-626/19 PPU) concern, in particular, the interpretation to be given to the judgment of the Court of Justice in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau, Germany)*. (3)

3. The same doubts have arisen in relation to the Public Prosecutor's Offices in Sweden (Case C-625/19 PPU) and Belgium (Case C-627/19 PPU), in which cases I am also delivering my Opinion today.

4. Although my position in principle continues to be that which I put forward in *OG (Public Prosecutor's Office in Lübeck)* and *PI (Public Prosecutor's Office in Zwickau)* (4) and in *PF (Prosecutor General of Lithuania)*, (5) it now falls to me to look at the interpretation of the aforementioned judgment, as well as of the judgment delivered on 9 October 2019 (6) in another similar case.

I. Legal framework

A. EU law

5. I refer to the reproduction of recitals 5, 6, 8, 10 and 12 and Articles 1 and 9 of the Framework Decision which is contained in the Opinion in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*.

B. National law. Code de procedure pénale (7)

6. In Chapter I *bis* (‘Powers of the Minister for Justice’) of Title I (‘Authorities responsible for conducting criminal justice policy, criminal prosecution and pre-trial investigation’) of Book I of the CPP, Article 30 provides:

‘The Minister for Justice shall conduct the criminal justice policy determined by the Government. He shall ensure that it is applied consistently throughout the territory of the [French] Republic.

To that end, he shall issue general instructions to the judges attached to the Public Prosecutor’s Office.

He cannot issue any instructions to them in individual cases.

Every year, he shall publish a report on the application of the criminal justice policy determined by the Government, setting out the conditions under which that policy was implemented and the general instructions issued under the second paragraph. The report shall be forwarded to Parliament. It may give rise to a debate in the National Assembly and the Senate’.

7. In Section 2 (‘Powers of the Principal Public Prosecutor attached to the Courts of Appeal’) of Chapter II of the aforementioned Title I of Book I, Article 36 states:

‘The Principal Public Prosecutor [attached to the Courts of Appeal] may, by written instructions included in the case file, direct the public prosecutors to bring prosecutions, or arrange for prosecutions to be brought, or to refer to the competent court such written submissions as the Principal Public Prosecutor considers appropriate’.

II. Disputes and questions referred for a preliminary ruling

A. Case C-566/19 PPU

8. On 24 April 2019, the Deputy Principal Prosecutor attached to the Public Prosecutor’s Office at the Tribunal de Grande Instance de Lyon (Regional Court, Lyon, France) issued an EAW for the purposes of conducting a criminal prosecution against JR.

9. By decision of 19 June 2019, the Chambre du Conseil du Tribunal d’arrondissement de Luxembourg (Investigation Chamber of the District Court, Luxembourg) approved JR’s surrender to the French authorities.

10. JR appealed against that decision before the referring court, requesting, for the purposes of the present proceedings, that the EAW be declared invalid because the authority which had issued it is not a ‘judicial authority’ within the meaning of Article 6(1) of the Framework Decision. He claimed that the French Public Prosecutor’s Office may be subject to indirect instructions from the executive, which is incompatible with the criteria established by the Court of Justice in this regard.

11. It was in those circumstances that the Cour d’appel (chambre du conseil) (Court of Appeal (Investigation Chamber), Luxembourg) decided to refer the following question for a preliminary ruling:

‘Can the French Public Prosecutor’s Office at the investigating court or trial court, which has jurisdiction in France, under the law of that State, to issue a European arrest warrant, be considered to be an issuing judicial authority, within the autonomous meaning of that term in Article 6(1) of [the] Framework Decision …, in circumstances where, deemed to monitor compliance with the conditions necessary for the issue of a[n] EAW and to examine whether such a warrant is proportionate in relation to the details of the criminal file, it is, at the same time, the authority responsible for the criminal prosecution in the same case?’

B. Case C-626/19 PPU

12. On 27 March 2019, the Public Prosecutor at the Tribunal de Grande Instance de Tours (Regional Court, Tours, France) issued an EAW for the purposes of conducting a criminal prosecution against YC, who was arrested in the Netherlands on 5 April 2019.

13. The Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), which has to decide whether to execute that EAW, has referred the following questions for a preliminary ruling:

‘I. Can a Public Prosecutor who participates in the administration of justice in the issuing Member State, who acts independently in the execution of those of his responsibilities which are inherent in the issuing of a European arrest warrant, and who has issued an EAW, be regarded as an issuing judicial authority within the meaning of Article 6(1) of [the] Framework Decision … if a judge in the issuing Member State has assessed the conditions for issuing an EAW and, in particular, the proportionality thereof, prior to the actual decision of that Public Prosecutor to issue the EAW?

II. If the answer to the first question is in the negative, has the condition been met that the decision of the Public Prosecutor to issue an EAW and, in particular, the question of its proportionality, must be capable of being the subject of court proceedings which meet in full the requirements inherent in effective judicial protection as referred to in paragraph 75 of the judgment [in *OG and PI (Public Prosecutor’s Offices in Lübeck and Zwickau)*] if, after his actual surrender, the requested person can avail of a legal remedy under which the invalidity of the EAW may be invoked before a court in the issuing Member State and under which that court examines, inter alia, whether the decision to issue that EAW was proportionate?’

III. Procedure before the Court of Justice and the positions of the parties

14. Case C-566/19 was registered at the Court of Justice on 25 July 2019, the referring court not having requested that the case be dealt with under the urgent preliminary ruling procedure.

15. Case C-626/19 PPU was registered at the Court of Justice on 22 August 2019. Given the decision made in the main proceedings to remand YC in custody, the referring court requested that the urgent preliminary ruling procedure be applied.

16. The Court of Justice ordered that both cases be dealt with under the urgent procedure and joined them for the purposes of processing and giving judgment on them.

17. Written observations have been lodged by JR, the French and Netherlands Governments, the Luxembourg Principal Public Prosecutor, the Netherlands Public Prosecutor's Office and the Commission.

18. The hearing took place on 24 October 2019 and was held in conjunction with the hearings in Cases C-625/19 PPU and C-627/19 PPU. The hearing was attended by JR, YC, XD, ZB, the Luxembourg Public Prosecutor's Office, the Netherlands Public Prosecutor's Office, the Netherlands, French, Swedish, Belgian, Irish, Spanish, Italian and Finnish Governments and the Commission.

IV. Analysis

A. Preliminary considerations

19. Both references for a preliminary ruling seek to determine whether the French Public Prosecutor's Office is an 'issuing judicial authority' within the meaning of Article 6(1) of the Framework Decision. Each reference asks that question from a different perspective:

– The Luxembourg court asks whether the French Public Prosecutor's Office satisfies the condition as to the independence which the authority issuing an EAW must exhibit.

– The Netherlands court starts from the premiss that the French Public Prosecutor's Office is independent, but doubts whether the EAWs which it may issue may be subject to judicial review.

20. As I have already observed, those questions have arisen in the context of the uncertainty created for the referring courts by the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, and in particular by the finding therein that the concept of an 'issuing judicial authority' in Article 6(1) '[does] not includ[e] public prosecutors' offices […] which are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive'. (8)

21. It must, therefore, be determined:

– Whether the French Public Prosecutor's Office is an independent institution, as any judicial authority issuing an EAW must be (Case C-566/19).

– If the answer is in the affirmative, whether a judicial examination of the requirements for an EAW can be carried out before the 'actual decision' made by the public prosecutor's office issuing it (first question in Case C-626/19 PPU).

– Whether, in the event that such a review must take the actual form of a legal action against the decision of the public prosecutor's office, it is sufficient for that action to be brought after surrender has taken place (second question in Case C-626/19 PPU).

22. In order to give an answer to the Luxembourg court (Case C-566/19), it will be necessary to examine the reasoning applied in the judgments in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* and *NJ (Public Prosecutor's Office in Vienna)*; the resolution of Case C-626/19 PPU calls for an interpretation to be found which reconciles paragraphs 68 and 75 of the first of those judgments.

B. The independence of the Public Prosecutor's Office in France

23. To my mind, the Public Prosecutor's Office cannot be classified as an 'issuing judicial authority' under Article 6(1) of the Framework Decision, for the reasons I have given previously, which are concerned, in brief, with safeguarding the liberty of citizens, which can be restricted only by order of a court. (9) An EAW could not, therefore, be issued by the German Public Prosecutors, the Prosecutor General of Lithuania or, now, the French Public Prosecutor's Office.

24. Although the Court of Justice also starts from the premiss that the authority issuing an EAW must be independent, it has adopted a different approach which, in my view, varies depending on whether regard is had to the judgment of 25 July 2018 in *Minister for Justice and Equality (Deficiencies of the system of justice)*, (10) or the judgments of 27 May 2019 in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* and *PF (Prosecutor General of Lithuania)*. (11)

25. It is appropriate, therefore, to set out the circumstances in which that case-law was established.

1. The case-law of the Court of Justice on this matter

26. In the view of the Court of Justice, it is sufficient for the issuing judicial authority to be 'capable of exercising its responsibilities 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*, such that it is beyond doubt that the decision to issue a European arrest warrant lies with that authority and not, ultimately, with the executive'. (12)

27. According to that line of argument:

– The issuing judicial authority must 'give assurances to the executing judicial authority that, as regards the guarantees provided by the legal order of the issuing Member State, it acts independently in the execution of those of its responsibilities which are inherent in the issuing of a European arrest warrant'.

– There must be 'statutory rules and an institutional framework capable of guaranteeing that the issuing judicial authority is not exposed, when adopting a decision to issue such an arrest warrant, to any risk of being subject, inter alia, to an instruction in a specific case from the executive'. (13)

– The possibility of exposure to any instructions in a specific case from the executive appears to be the key factor in assessing the independence of the public prosecutor's office as an issuing judicial authority.

28. In the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, the decisive factor was that the Minister for Justice of the Federal Republic of Germany, or his counterparts in the Federal *Länder*, were able to issue instructions to the public prosecutor's offices. (14) This carried more weight than the finding that 'German public prosecutor's offices are required to act objectively and must investigate not only incriminating but also exculpatory evidence'. (15)

29. In the judgment in *NJ (Public Prosecutor's Office in Vienna)*, the Court of Justice held, for similar reasons, that the Austrian public prosecutors did not satisfy the requirements inherent in the independence required to issue an EAW. (16)

30. Conversely, the Court held that the Prosecutor General of Lithuania could be regarded as an 'issuing judicial authority' since, being responsible for issuing the EAW, he enjoys an independence from the executive that is guaranteed by the national Constitution. (17)

31. I should point out that, in its case-law to date, the Court has not clearly ruled on the dependence or independence of each of the public prosecutors, subject to instructions from their hierarchical superiors. (18)

2. The Public Prosecutor's Office in France

32. According to the information in the documents before the Court, until 2013 the Minister for Justice in France could issue instructions to public prosecutors in specific cases. It would, therefore, follow from the case-law established in the judgments in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* and *NJ (Public Prosecutor's Office in Vienna)* that, before that date, the French Public Prosecutor's Office could not be regarded as an 'issuing judicial authority'.

33. The position of the French Public Prosecutor's Office as being subject to potential instructions from the executive in specific cases disappeared when the CPP was reformed in 2014. The right of the Minister for Justice to issue general instructions (Article 30 of the CPP) remains, however. As does, of course, the hierarchical structure characteristic of the Public Prosecutor's Office, with the result that its members are organisationally and functionally subordinate to the Principal Public Prosecutor at each court. Each public prosecutor, therefore, works 'under the direction and control of [his/her] hierarchical superiors'. (19)

34. This raises two issues:

– First, whether the right of the executive to issue general instructions to public prosecutors is capable of adversely affecting their independence.

– Secondly, whether the hierarchical structure characteristic of public prosecutor's offices is innocuous from the point of view of the independence of their members.

(a) Instructions in specific cases and general instructions

35. In the operative part of the judgment in *OG and PI* (*Public Prosecutor's Offices in Lübeck and Zwickau)*, the Court of Justice only expressly referred to instructions in specific cases. In paragraph 73 thereof, however, it held that the public prosecutor's decision-making power could not be 'subject to external directions or instructions', without further clarification.

36. In that case, as it was obvious that the Minister for Justice could give instructions to German public prosecutors *in specific cases,* it was unnecessary to rule on the effect of *general* instructions on their actions.

37. In my view, however, the latter type of instructions may be relevant too. In my Opinion in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, I recalled the entirely correct approach the Court of Justice had taken when ruling in the judgment in *Minister for Justice and Equality* (*Deficiencies in the system of justice)* on the independence of the judicial authority issuing the EAW. Such independence presupposes that 'the authority in question "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*, thus being protected against external interventions or pressure liable

to impair the independent judgment of its members and to influence their decisions"'. (20)

38. It is inconceivable that an (independent) judge should have to comply with instructions from the executive, however general they may be, when called upon to adjudicate on something as precious as the liberty of his fellow citizens. The judge is subject only to the law, not to any criminal justice policy instructions which a government (acting through the Minister for Justice) may issue.

39. Such general instructions may, legitimately, be binding on public prosecutors in Member States which choose to permit them. It is for that very reason (in other words, that their capacity to act autonomously is restricted notwithstanding that they are subject only to the law) that members of a public prosecutor's office who are bound by general government instructions when it comes to deciding whether or not to issue an EAW cannot be accorded the *status* of issuing judicial authority.

40. It is not inconceivable that such general instructions may express a given government's criminal justice policy, (21) requiring members of the public prosecutor's office, for example, to issue EAWs for some offences, in all cases, or for certain categories of offender. How can a decision be said to be independent if it is adopted by someone who, when issuing an EAW, is compelled to comply, even against his own better judgment, with the (general) instructions issued by the Government?

41. The counter-argument to the foregoing might be that this is not the norm. I would emphasise, however, that, in cases involving deprivation of liberty, the only way to safeguard against binding instructions from the executive (not only general instructions but also, a fortiori, specific instructions) in connection with EAWs is to ensure that the person adjudicating upon a person's liberty does so from a position of absolute independence and is subject only to the law, not to the guidance or instructions, whether particular or general, of the executive.

42. It is my view, therefore, that the Court of Justice would have to revert to the principle it set out in paragraph 63 of the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)* and confirm that an entity called upon to issue an EAW cannot be subject to any hierarchical constraint or subordinated to any other body, or 'tak[e] orders or instructions *from any* source *whatsoever*'.

(b) The hierarchical subordination of the Public Prosecutor's Office in France

43. As I maintained in the Opinion in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, again citing the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)*, 'independence […] is incompatible with any "hierarchical constraint or subordinat[ion] to any other body"'. In relation to judges and courts, independence presupposes that 'members of the judiciary are also independent from the higher courts, which — although they can review and annul the rulings of lower courts a posteriori — cannot, however, dictate to them how they should adjudicate'. (22)

44. In my opinion, independence must also be a feature of the public prosecutor's office as an 'issuing authority' within the meaning of the Framework Decision. If, then, as appears to have been established, French public prosecutors, in addition to acting in accordance with general instructions issued by the Minister for Justice, are also required to comply with the orders of their hierarchical superiors within the structure of the Public Prosecutor's Office, (23) it would be difficult to describe them as independent in their role as the 'issuing judicial authority' for an EAW.

45. That, moreover, was the position adopted by the Court of Justice in the judgment of 16 February 2017, *Margarit Panicello*, paragraphs 41 and 42, when it held that another official (a *secretario judicial* (registrar)) *acting* in an ancillary capacity in the administration of justice could not refer questions for a preliminary ruling to the Court of Justice. That official's lack of independence was due to the very fact that he was required to 'comply with instructions from his hierarchical superior'. (24)

46. Although the criteria for interpreting Article 267 TFEU (25) are not entirely the same as those applicable to Article 6(1) of the Framework Decision, it is my view that, in substance, they express the same concern.

47. I would draw attention once again to paragraph 63 of the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)*, concerning the absence of 'hierarchical constraints or subordination' as an essential and inseparable component of independence.

48. In the case which gave rise to the judgment in *PF (Prosecutor General of Lithuania)*, the Court of Justice held 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 the French Republic, on the other hand, there is no equivalent constitutional guarantee.

(c) The impartiality of the public prosecutor's office

49. The Luxembourg referring court expresses uncertainty as to whether the French Public Prosecutor's Office may be regarded as an 'issuing judicial authority' for an EAW not only because of the status of that institution but also because public prosecutors, '… deemed to monitor compliance with the conditions necessary for the issue of a[n EAW] and to examine whether such a warrant is proportionate in relation to the details of the criminal file, [are], at the same time, the authority responsible for the criminal prosecution in the same case'.

50. To my mind, the referring court's misgivings have more to do with the impartiality of the public prosecutor's office than with its independence.

51. The public prosecutor's office is, by definition, the '[*party*] *prosecut[ing]* in the proceedings'. (26) In so far as it is a *party* in criminal proceedings against another *party* (the suspect or the accused), it should not fall to the public prosecutor's office but rather to the court adjudicating upon those proceedings to determine the personal situation of the opposing *party* to the point of depriving him of his liberty.

52. That premiss might be qualified, however, if the law obliges the public prosecutor's office to act with full objectivity, assessing and presenting to the court both the incriminatory and exculpatory evidence against or in favour of the suspect or the accused.

53. In particular, if the public prosecutor's office is required to discharge that duty of objectivity during the investigation phase of a criminal prosecution, its position is analogous to that of an investigating judge (in countries which have this function), whose customary powers include the issue of EAWs, if the domestic law of the country concerned so provides.

54. I therefore take the view that the formal status of a public prosecutor's office as a *party* in criminal proceedings is not incompatible with its being recognised as exhibiting *impartiality*, to the extent that this constitutes a rule of procedural conduct (not only as a matter of professional ethics but also as a matter of law). Accordingly, national legislation may specify, as it does in France, that the public prosecutor's office conducts criminal prosecutions and enforces the criminal law 'with due regard for the principle of impartiality by which it is bound'. (27)

55. In any event, since it is clear from the foregoing, in my opinion, that the institutional framework of the French Public Prosecutor's Office provides no guarantee that it acts without any influence whatsoever from the executive when issuing EAWs, I consider that the question raised by the referring court in Case C-566/19 must be answered in the negative.

56. An answer to that effect would in and of itself make it unnecessary to reply to the Netherlands court's questions in Case C-626/19 PPU, since they assume that the Public Prosecutor's Office in France is independent, which I consider not to be the case. Nonetheless, I shall examine them in the alternative.

C. Judicial review of an EAW issued by a public prosecutor's office

1. Preliminary considerations

57. The Rechtbank Amsterdam (District Court, Amsterdam) is uncertain whether the third requirement laid down in the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, which has to be met in order for an authority — which, without being a judge or court, participates in the administration of justice and acts independently — to be able to issue EAWs, that is the requirement that its decisions be capable of being the subject of court proceedings, is fulfilled.

58. Paragraph 75 of the judgment in *OG and PI* (*Public Prosecutor's Offices in Lübeck and Zwickau)* states that, 'where the law of the issuing Member State confers the competence to issue a[n EAW] 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 [EAW] 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'.

59. The Netherlands Public Prosecutor's Office argues that the proceedings referred to in paragraph 75 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* are not required where, at the first of the two levels of protection on which the system provided for in the Framework Decision is based, a decision fulfilling the requirements of effective judicial protection had already been adopted. (28)

60. On that basis, therefore, the requirements set out in paragraphs 68 and 75 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* would be mutually exclusive. According to the referring court, however, those two requirements co-exist and are therefore simultaneously applicable. I share that view.

61. The assertions contained in paragraphs 68 and 75 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* certainly raise some questions.

62. Paragraph 68 states that the dual level of protection afforded by the EAW system '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*'. (29) Those levels are:

– That applicable at the time when 'a national decision, such as a national arrest warrant [NAW], is adopted'. (30)

– That applicable when the EAW itself is issued. (31)

63. The correct meaning of the expression 'at least, at one of the two levels of that protection' used in paragraph 68 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* can be gleaned only by reading the following paragraphs.

64. According to paragraph 69, 'it follows' from the statement contained in paragraph 68 that, where domestic law confers the competence to issue an EAW on an authority which, like the public prosecutor's office, participates in the administration of justice but is not a judge or a court, the EAW must be based on a 'national judicial decision, such as a national arrest warrant'. The latter (the NAW) must meet the requirements laid down in paragraph 68, that is to say, those 'inherent in effective judicial

protection'.

65. Consequently, an EAW issued by a public prosecutor must be based on an NAW issued by a judge or court, in other words, by a judicial authority in the strict sense. 'A decision meeting the requirements inherent in effective judicial protection', within the meaning of paragraph 68 of the judgment in *OG and PI* (*Public Prosecutor's Offices in Lübeck and Zwickau)*, must, therefore, be understood as being one adopted by a judge or court.

66. According to paragraph 71 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, the second level of protection means that the judicial authority competent to issue an EAW 'must review […] observance of the conditions necessary for the issuing of the European arrest warrant and examine whether, in the light of the particular circumstances of each case, it is proportionate to issue that warrant'.

67. It follows that an EAW based on an NAW granted by a judge or court can be issued by the public prosecutor's office in those Member States in which that institution participates in the administration of justice and does so fully independently.

68. In those circumstances, the 'requirements inherent in effective judicial protection' (that is to say, inherent in the intervention of a court in the strict sense) will already have been satisfied at the first level of protection, when the NAW on which the EAW is based was issued.

69. According to paragraph 75 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, however, the decision of the public prosecutor's office to issue an EAW must 'be capable of being the subject … of court proceedings which meet in full the requirements inherent in effective judicial protection'.

70. The need for such proceedings is not a condition which a public prosecutor's office must fulfil in order to be able to issue an EAW, that is to say, in order to be capable of being classified as an 'issuing judicial authority' within the meaning of Article 6(1) of the Framework Decision. Rather, it is a condition relating to the *lawfulness of the issuing of an EAW* by a public prosecutor's office and, therefore, to its effectiveness. (32)

71. This follows from the judgment in *PF (Prosecutor General of Lithuania)*, in which the Court, after finding that the Prosecutor General of Lithuania could be considered to be an 'issuing judicial authority', inasmuch as he participates in the administration of justice and his independence from the executive is guaranteed, observed that it could not be ascertained whether his decision to issue an EAW was capable of being the subject of court proceedings. (33) This did not prevent the Court from finding that the Prosecutor General was an 'issuing judicial authority' within the meaning of Article 6(1) of the Framework Decision.

72. In other words, it follows from the case-law of the Court of Justice that a public prosecutor's office can be regarded as an 'issuing judicial authority' within the meaning of Article 6(1) of the Framework Decision if it exhibits two characteristics: (a) it participates in the administration of justice; and (b) its organisational and functional status is such as to guarantee its independence.

73. If it exhibits both those characteristics, a public prosecutor's office can issue an EAW. However, an EAW issued in this way must be capable of being the subject of proceedings before a judge or court in the true sense. The non-existence of such proceedings would affect not its status as an 'issuing judicial authority' but the effectiveness of an EAW issued by it.

2. The first question referred for a preliminary ruling in Case C-626/19 PPU

74. If the foregoing interpretation were correct, the first of the questions raised by the referring court would have to be reworded.

75. The Rechtbank Amsterdam (Amsterdam District Court) asks whether a public prosecutor who participates in the administration of justice and acts independently can be regarded as an 'issuing judicial authority' within the meaning of Article 6(1) of the Framework Decision if his decision to issue an EAW is preceded (not followed) by a judicial examination.

76. I take the view, for the reasons given, that what matters is not whether, under the conditions specified, the public prosecutor is an 'issuing judicial authority', but whether the EAW which he has issued can be enforced in the executing Member State. Our examination must, therefore, focus on the lawfulness of the process for adopting an EAW rather than on the status of the person issuing it.

77. The question would therefore have to be reworded as follows: 'May the examination of compliance with the requirements for issuing an EAW adopted by a public prosecutor who warrants the description of 'issuing judicial authority' within the meaning of Article 6(1) of the Framework Decision take place before the EAW is issued?'

78. According to the information provided by the referring court, the EAW in this case was issued by a French public prosecutor further to a request from the court which had just issued the NAW. In the course of adopting the NAW, that court would therefore have analysed the requirements for issuing the EAW, in particular, its proportionality.

79. Of course, the fact that the court adopting the NAW assesses at that early stage whether the conditions necessary for the public prosecutor to be able to issue an EAW (in particular, whether it is proportionate to issue it) are also met, represents a significant guarantee that the mechanism provided for in the Framework Decision is being correctly applied.

80. If the NAW and the EAW are adopted simultaneously or almost immediately, there is no risk that the assessment as to

the proportionality of the EAW will be out of date. Conversely, that risk *is* present if the EAW is issued long after the NAW. In that event, after all, the proportionality assessment originally made by the court may have become obsolete and circumstances arising subsequently may be sufficient to warrant its amendment.

81. The Court of Justice refers to that possibility in the judgment in *NJ (Public Prosecutor's Office in Vienna)* when it emphasised that the review of proportionality carried out by the judge (34) must also take into account impingement on the rights of the person concerned which goes beyond the infringements of his right to liberty. To that end, the judge must assess the effects of the EAW on the social and family relationships established by someone already resident in a Member State other than that in which the EAW was issued.

82. Aside from the foregoing examination by a court of its own motion of the conditions for issuing an EAW, paragraph 75 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* expressly mentions 'court proceedings', that is to say a review sought by the person against whom the EAW is directed.

83. When adopting a NAW, the judge carries out his own assessment (of his own motion) of the circumstances warranting the issuing of the NAW, which may be followed by an EAW. As the Luxembourg Principal Public Prosecutor's Office pointed out, the person requested will not have participated in those proceedings, for obvious reasons. (35)

84. By its very nature, however, that judicial assessment is not such as to satisfy 'the requirements inherent in effective judicial protection' mentioned in paragraph 75 of the judgment in *OG and PI* (*Public Prosecutor's Offices in Lübeck and Zwickau)*. Such protection is always requested by the person concerned and takes the form of proceedings in which that person is able to intervene and participate, in exercise of his right of defence.

85. For that reason, the proceedings referred to in paragraph 75 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* cannot be replaced by a judicial review such as that carried out when the NAW is adopted. As a form of 'appeal', those proceedings may relate only to an EAW which has already been issued, which raises the question of when the option to bring them must be made available. This is the issue raised by the second question in Case C-626/19 PPU.

3. The second question referred for a preliminary ruling in Case C-626/19 PPU

86. The referring court proceeds on the premiss that the option to bring court proceedings against the decision of the public prosecutor's office to issue an EAW must be available. Starting from that assumption, it wishes to ascertain whether the option to bring such proceedings must be available before the EAW is executed or whether it is sufficient that they can be brought after the requested person is actually surrendered.

87. The judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* does not expressly address that question. Nonetheless, I agree with the Commission that, given the risk of impingement on the right to liberty that is inherent in the issuing of an EAW, the option to challenge it by way of court proceedings should be available as soon as the decision to issue it has been adopted. (36) Cases where, for reasons of investigative confidentiality or in the interests of ensuring that the person concerned does not abscond, immediate notification of the EAW is inadvisable until that person is arrested, should be excluded, however.

88. It goes without saying that proceedings brought after the requested person has been surrendered will enable him 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 measure in order to avert the harm inherent in the execution of an EAW (in particular, the deprivation of liberty).

89. In any event, as the Prosecutor General of Luxembourg observed, (37) Article 10(5) of Directive 2013/48/EU (38) provides that the Member State issuing the EAW has the obligation to facilitate the appointment by the requested person of a lawyer from the executing Member State, with a view, obviously, to making it easier for him to exercise his right to effective judicial protection before the courts of the issuing Member State without having to wait for his surrender.

90. The fact that paragraph 75 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* is silent as to the point in time at which the option to bring proceedings against an EAW in the issuing Member State must be made available should not, therefore, be interpreted as meaning that the mere option of bringing proceedings after the person concerned has been surrendered pursuant to the EAW is sufficient for the purposes of compatibility with EU law.

91. In my view, a national system which provides for such proceedings only *ex post* and does not allow the EAW to be challenged at its outset (39) does not satisfy 'in full the requirements inherent in effective judicial protection' in the issuing Member State, to which the Court of Justice refers. The person concerned must have access to a remedy which is capable of guaranteeing full judicial protection, given the serious implications for his right to liberty.

92. It is important to emphasise, however, in line with the position adopted by the Commission, (40) that the bringing of proceedings before the issuing Member State cannot adversely affect the processing of the EAW in the executing Member State, whose judicial authority must comply with the conditions laid down in the Framework Decision and observe the time limits prescribed there. All of which, ultimately, operates to the benefit of a requested person who is deprived of his liberty while the surrender procedure is being conducted.

93. In short, the two questions referred for a preliminary ruling by the Netherlands court may be answered by way of a single reply emphasising that, in any event, the person concerned must be given the opportunity to bring proceedings before a

judge or court in the strict sense against an EAW issued by the public prosecutor's office, even if that EAW is preceded by an NAW granted by a judge.

4. A final consideration

94. In my view, the foregoing conclusion follows inevitably from bringing to bear the ultimate consequences of the requirement laid down in paragraph 75 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*.

95. As I have already explained, it is not essential that that requirement be fulfilled in order for a public prosecutor's office to be capable of being regarded as an 'issuing judicial authority' within the meaning of the Framework Decision. It is the case, however, that, even if a public prosecutor's office bore that title, an EAW issued by it would be seriously defective if there were no means of bringing court proceedings against it.

96. In the final analysis, there would be little point in recognising a public prosecutor's office as having the status of 'issuing judicial authority' if an EAW issued by it could not be executed because the warrant originates from a national system that does not allow court proceedings to be brought against it.

97. In order to avoid such an undesirable effect, the Court of Justice could declare that, pending the relevant legislative reforms, (41) the courts of issuing Member States whose rules authorise their public prosecutors to issue EAWs must interpret their procedural legislation as meaning that proceedings such as those referred to in paragraph 75 of the judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)* can be brought.

98. If such an interpretation in conformity with EU law were not viable (because it would be *contra legem* in the national order), there might, in my view, be another way of ensuring that the application of the Framework Decision is not frustrated.

99. The principle of mutual trust between the Member States, and its corollary of mutual recognition, call for a simplification of the procedure provided for in the Framework Decision. From that point of view, I do not think it appropriate simply to add to the grounds for 'refus[ing] to execute' an EAW another, not expressly provided for in the Framework Decision, to the effect that, in the case of EAWs issued by a public prosecutor's office, it must be demonstrated that the national legislation of the issuing State allows proceedings to be brought before the judicial authority of that State.

100. Imposing that requirement on the executing judicial authority would make the processing of an EAW even more complex, because that authority would have to be (more than basically) familiar with the individual characteristics of the procedural systems of the other Member States, or else request additional information about them. (42)

101. Against that background, it should fall to the courts of the issuing State themselves, once an EAW has been executed, to determine the appropriate conclusions to be drawn, in their domestic law and in the light of the requirements of EU law as interpreted by the Court of Justice, from the fact that the EAW cannot be challenged under their own national legislation.

102. In short, if an independent public prosecutor who is not subject to instructions from the executive in this regard issues an EAW, that warrant, in so far as it is issued by an 'issuing judicial authority' within the meaning of the Framework Decision, must be processed by the executing judicial authority even if there is nothing to indicate to it that the issuing of the warrant may be the subject of court proceedings in the issuing Member State.

V. Conclusion

103. In the light of the foregoing, I propose that the Court of Justice give the following answer to the Cour d'appel (Chambre du conseil) (Court of Appeal (Investigation Chamber), Luxembourg) and the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands):

'Article 6(1) of 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, must be interpreted as meaning that:

A public prosecutor's office cannot be regarded as an 'issuing judicial authority' if, when adjudicating on a European arrest warrant, 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.

In the alternative:

A person requested under a European arrest warrant 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'.

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1 Original language: Spanish.

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2 Council Framework Decision 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 Framework Decision').

3 Judgment of 27 May 2019, C-508/18 and C-82/19 PPU, EU:C:2019:456; 'Judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*'.

4 Cases C-508/18 and C-82/19 PPU, EU:C:2019:337; 'Opinion in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*'.

5 Case C-509/18, EU:C:2019:338; 'Opinion in *PF (Prosecutor General of Lithuania)*'.

6 Case C-489/19 PPU, *NJ (Public Prosecutor's Office in Vienna)*; EU:C:2019:849; 'Judgment in *NJ (Public Prosecutor's Office in Vienna)*'.

7 Code of Criminal Procedure ('CPP').

8 Judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, paragraph 90.

9 Opinions in *PF (Prosecutor General of Lithuania)* and *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*.

10 Case C-216/18 PPU, EU:C:2018:586; 'judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)*'.

11 Case C-509/18, EU:C:2019:457; 'judgment in *PF (Prosecutor General of Lithuania)*'.

12 Judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, paragraph 73. Italics added.

13 *Ibidem*, paragraph 74.

14 *Ibidem*, paragraph 76.

15 *Loc. ult. cit.*

16 Judgment in *NJ (Public Prosecutor's Office in Vienna)*, paragraph 40, *in fine*.

17 Judgment in *PF (Prosecutor General of Lithuania)*, paragraphs 55 and 56.

18 The fact that public prosecutors are subordinate to their hierarchical superiors is mentioned in the judgment in *NJ (Public Prosecutor's Office in Vienna)*, paragraph 40: 'in the case of the Austrian Public Prosecutor's Offices, [it is apparent] that they are directly subordinate to the higher public prosecutor's offices and subject to their instructions and that the latter are in turn subordinate to the Federal Minister of Justice'.

19 Article 5 of the Basic Law on the status of the judiciary (Ordinance No 58-1270 of 22 December 1958).

20 Opinion in *OG and PI* (*Public Prosecutor's Offices in Lübeck and Zwickau)*, point 87, which reproduces paragraph 63 of the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)*, paragraph 87. Italics added.

21 In Decision No 2017-680 QPC, of 8 December 2017, the Conseil Constitutionnel (Constitutional Council, France) confirmed that 'it is for the [French] Government to determine and conduct national policy, in particular in matters falling within the remit of the Public Prosecutor's Office' (point 5).

22 Opinion in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, point 96.

23 Article 36 of the CPP provides, after all, that public prosecutors 'are obliged to follow the instructions given to them by their hierarchical superiors', other than in their oral interventions (French Government's observations, paragraph 16). The issue of an EAW does not require oral intervention and, to that extent, is subject to the general rule.

24 Case C-503/15, EU:C:2017:126.

25 In the judgment of 12 December 1996, *Criminal proceedings against X* (Cases C-74/95 and C-129/95, EU:C:1996:), the Court of Justice held that the Italian Public Prosecutor's Office did not have standing to refer questions for a preliminary ruling to the Court, as its role 'is not to rule on an issue in complete independence but, acting as prosecutor in the proceedings, to submit that issue, if appropriate, for consideration by the competent judicial body' (paragraph 19).

26 Judgment of 12 December 1996, *Criminal proceedings against X* (Cases C-74/95 and C-129/95, EU:C:1996:491), paragraph 19. No italics in the original.

27 Article 31 of the CPP, following its reform of 25 July 2013.

28 Paragraph 2.10, fourth subparagraph, of the order for reference.

29 Italics added.

30 Judgment in *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, paragraph 67.

31 *Loc. ult. cit.*

32 The same view is expressed by the Commission (paragraphs 23 to 26 of its written observations) and the Luxembourg Principal Public Prosecutor (p. 4 of the Principal Public Prosecutor's written observations).

33 Judgment in *PF (Prosecutor General of Lithuania)*, paragraph 56.

34 The review of proportionality 'relates, in the context of the endorsement of a national arrest warrant, to the effects of the deprivation of liberty alone caused by it and, in the context of the endorsement of a European arrest warrant, to the impinging on the rights of the person concerned which goes beyond the infringements of his right to freedom already examined. The court responsible for the endorsement of a European arrest warrant is required to take into account, in particular, the effects of the surrender procedure and the transfer of the person concerned residing in a Member State other than the Republic of Austria on that person's social and family relationships' (paragraph 44).

35 Written observations of the Luxembourg Principal Public Prosecutor, p. 5.

36 Paragraphs 30 to 32 of the Commission's written observations.

37 Written observations of the Luxembourg Principal Public Prosecutor, p. 5 *in fine*.

38 Directive of the European Council and of the Parliament 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 (OJ 2013 L 249, p. 1).

39 Or which, as in French law, limits the possibility of bringing such proceedings at an earlier stage for a requested person who is already a party to the corresponding criminal proceedings, as the French Government states in paragraphs 35 and 37 of its written observations.

40 Commission's written observations, paragraph 33.

41 At the hearing, the French, Netherlands and Swedish Governments argued that, if their laws had to be revised as a consequence of the ruling given by the Court of Justice, the temporal effects of that ruling should be limited. I opposed a similar

request in my Opinion in *Poltorak* (C-452/16 PPU, EU:C:2016:782), to which I refer (points 69 and 70).

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42 At the hearing, it became apparent that some of the Member States' legal systems offer indirect (and, on occasion, very elaborate) routes to obtaining a judicial review of an EAW. Deciding in each case whether such a remedy is available requires a knowledge of the procedural law of the issuing Member State which it would be unreasonable to expect of the executing judicial authority.

JUDGMENT OF THE COURT (Grand Chamber)

27 May 2019 (*)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 6(1) — Concept of 'issuing judicial authority' — European arrest warrant issued by a public prosecutor's office of a Member State — Legal position — Whether subordinate to a body of the executive — Power of a Ministry of Justice to issue an instruction in a specific case — No guarantee of independence)

In Joined Cases C-508/18 and C-82/19 PPU,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 31 July 2018, received at the Court on 6 August 2018, and from the High Court (Ireland), made by decision of 4 February 2019, received at the Court on 5 February 2019, in proceedings relating to the execution of European arrest warrants issued in respect of

OG (C-508/18),

PI (C-82/19 PPU),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal, M. Vilaras, T. von Danwitz, C. Toader, F. Biltgen, K. Jürimäe (Rapporteur) and C. Lycourgos, Presidents of Chambers, L. Bay Larsen, M. Safjan, D. Šváby, S. Rodin and I. Jarukaitis, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: L. Hewlett, Principal Administrator,

having regard to the High Court's request of 4 February 2019, received at the Court on 5 February 2019, that the reference for a preliminary ruling in Case C-82/19 PPU be dealt with under the urgent procedure, pursuant to Article 107 of the Rules of Procedure of the Court,

having regard to the decision of 14 February 2019 of the Fourth Chamber to grant that request,

having regard to the written procedure and further to the hearing on 26 March 2019,

after considering the observations submitted on behalf of:

– OG, by E. Lawlor, Barrister-at-Law, and R. Lacey, Senior Counsel, instructed by M. Moran, Solicitor,

– PI, by D. Redmond, Barrister, and R. Munro, Senior Counsel, instructed by E. King, Solicitor,

– the Minister for Justice and Equality, by J. Quaney, M. Browne, G. Hodge and A. Joyce, acting as Agents, and by B.M. Ward, A. Hanrahan, J. Benson, Barristers-at-Law, and P. Caroll, Senior Counsel,

– the Danish Government, by P.Z.L. Ngo and J. Nymann-Lindegren, acting as Agents,

– the German Government, initially by T. Henze, J. Möller, M. Hellmann and A. Berg, acting as Agents, and subsequently by M. Hellmann, J. Möller and A. Berg, acting as Agents,

– the French Government, by D. Colas, D. Dubois and E. de Moustier, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by S. Faraci, avvocato dello Stato,

– the Lithuanian Government, by V. Vasiliauskienė, J. Prasauskienė, G. Taluntytė and R. Krasuckaitė, acting as Agents,

– the Hungarian Government, by M.Z. Fehér and Z. Wagner, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,

– the Austrian Government, by G. Hesse, K. Ibili and J. Schmoll, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by R. Troosters, J. Tomkin and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2019,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 6(1) of 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) (‘Framework Decision 2002/584’).

2 The requests have been made in proceedings in Ireland concerning the execution of two European arrest warrants issued respectively in Case C-508/18 on 13 May 2016 by the Staatsanwaltschaft bei dem Landgericht Lübeck (Office of the Public Prosecutor at the Regional Court, Lübeck, Germany) (‘the Public Prosecutor’s Office in Lübeck’) for the purposes of the prosecution of OG and in Case C-82/19 PPU on 15 March 2018 by the Staatsanwaltschaft Zwickau (Office of the Public Prosecutor, Zwickau, Germany) (‘the Public Prosecutor’s Office in Zwickau’) for the purposes of the prosecution of PI.

Legal context

European Union law

3 Recitals 5, 6, 8 and 10 of Framework Decision 2002/584 read as follows:

‘(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the “cornerstone” of judicial cooperation.

…

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

...

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) [EU], determined by the Council pursuant to Article 7(1) [EU] with the consequences set out in Article 7(2) [EU].’

4 Article 1 of Framework Decision 2002/584, under the heading ‘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.

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 [EU].’

5 Articles 3, 4 and 4a of Framework Decision 2002/584 list the grounds for mandatory and optional non-execution of the European arrest warrant. Article 5 of the framework decision sets out guarantees to be given by the issuing Member State in particular cases.

6 Under Article 6 of Framework Decision 2002/584, under the heading ‘Determination of the competent judicial authorities’:

‘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.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the 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.'

Irish law

7 The European Arrest Warrant Act 2003, in the version applicable to the cases in the main proceedings ('the EAW Act'), transposes Framework Decision 2002/584 into Irish law. The first paragraph of section 2(1) of the EAW Act provides:

'"judicial authority" means the judge, magistrate or other person authorised under the law of the Member State concerned to perform functions the same as or similar to those performed under section 33 by a court in the State.'

8 Section 20 of the EAW Act provides:

'(1) In proceedings to which this Act applies the High Court [(Ireland)] may, if of the opinion that the documentation or information provided to it is not sufficient to enable it to perform its functions under this Act, require the issuing judicial authority or the issuing state, as may be appropriate, to provide it with such additional documentation or information as it may specify, within such period as it may specify.

(2) The Central Authority in the State may, if of the opinion that the documentation or information provided to it under this Act is not sufficient to enable it or the High Court to perform functions under this Act, require the issuing judicial authority or the issuing state, as may be appropriate, to provide it with such additional documentation or information as it may specify, within such period as it may specify. …'

German law

9 Under Paragraph 146 of the Gerichtsverfassungsgesetz (Law on the Judicial System; 'the GVG'):

'The officials of the public prosecutor's office must comply with service-related instructions of their superiors.'

10 Paragraph 147 of the GVG provides:

'The power of supervision and direction shall lie with:

1. the Bundesminister der Justiz und für Verbraucherschutz [(Federal Minister for Justice and Consumer Protection)] in respect of the Federal Prosecutor General and the federal prosecutors;

2. the Landesjustizverwaltung [(*Land* authority for the administration of justice)] in respect of all the officials of the public prosecutor's office of the *Land* concerned;

3. the highest-ranking official of the public prosecutor's office at the Higher Regional Courts and the Regional Courts in respect of all the officials of the public prosecutor's office of the given court's area of jurisdiction.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-508/18

11 OG is a Lithuanian national residing in Ireland. On 13 May 2016 his surrender was sought pursuant to a European arrest warrant issued by the Public Prosecutor's Office in Lübeck for the prosecution of a criminal offence which OG allegedly committed in 1995 which that public prosecutor's office identifies as 'murder, grievous bodily injury'.

12 OG brought an action before the High Court challenging the validity of that European arrest warrant, on the ground, inter alia, that the Public Prosecutor's Office in Lübeck is not a 'judicial authority' within the meaning of Article 6(1) of Framework Decision 2002/584.

13 In support of that contention, OG relied on a legal opinion of a German lawyer which stated, inter alia, that under German law the public prosecutor's office does not enjoy the autonomous or independent status of a court of law, but is subject to an administrative hierarchy headed by the Minister for Justice, so that there is a risk of political involvement in surrender proceedings. Furthermore, the public prosecutor's office is not a judicial authority with competence to order detention or arrest of any person except in exceptional circumstances. Only a judge or court has those powers. It is the public prosecutor's office which is responsible for executing a national arrest warrant issued by a judge or court, where appropriate, by issuing a European arrest warrant. Accordingly, no 'judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, was involved in the issuing of the European arrest warrant in respect of OG.

14 In those circumstances, the High Court sought further information from the Public Prosecutor's Office in Lübeck, via the Central Authority for Ireland, in relation to the evidence presented by OG as to whether that public prosecutor's office is a 'judicial authority', having regard, in particular, to the judgments of 10 November 2016, *Poltorak* (C-452/16 PPU,

EU:C:2016:858), and of 10 November 2016, *Özçelik* (C-453/16 PPU, EU:C:2016:860).

15 On 8 December 2016 the Public Prosecutor's Office in Lübeck replied to that request and stated that under German law the public prosecutor's office is a body within the criminal justice system (as are the national courts) which is responsible for the prosecution of criminal offences, and also participation in criminal proceedings. Its role is, inter alia, to ensure the legality, objectivity and proper conduct of investigations. The public prosecutor's office prepares the ground for the exercise of judicial power and enforces judicial decisions. It has the right to initiate investigations, which the courts do not.

16 As regards its relationship to the Schleswig-Holsteinischer Minister für Justiz (Minister for Justice of the *Land* of Schleswig-Holstein, Germany), the Public Prosecutor's Office in Lübeck stated that that minister has no power to issue instructions to it. It added that under national law only the Staatsanwaltschaft beim Schleswig-Holsteinischen Oberlandesgericht (Public Prosecutor General's Office at the Higher Regional Court of the *Land* of Schleswig-Holstein, Germany) ('the Public Prosecutor General's Office'), at the head of the public prosecutor's office of that *Land*, can issue instructions to the Leitender Oberstaatsanwalt der Staatsanwaltschaft Lübeck (Senior Public Prosecutor of the Public Prosecutor's Office in Lübeck, Germany). In addition, the power to issue instructions is circumscribed by the Basic Law of the Federal Republic of Germany and by the principle of legality, which governs criminal proceedings, that principle being itself derived from the principle of the rule of law. Although that minister could, where relevant, exercise an 'external' power to issue instructions in respect of the Public Prosecutor General's Office, he would be bound to comply with those principles. In addition, in the *Land* of Schleswig-Holstein, the minister is required to inform the President of the Landtag (State Parliament) whenever instructions have been issued to the Public Prosecutor General's Office. In the present case, as regards OG, no instructions were issued by that minister to the Public Prosecutor General's Office or by the Public Prosecutor General's Office to the Public Prosecutor's Office in Lübeck.

17 On 20 March 2017 the High Court rejected OG's submission that the Public Prosecutor's Office in Lübeck is not a 'judicial authority' within the meaning of Article 6(1) of Framework Decision 2002/584. In an appeal brought before the Court of Appeal (Ireland), the judgment of the High Court was upheld.

18 The referring court, the Supreme Court (Ireland), granted leave to appeal against the judgment of the Court of Appeal.

19 On the evidence before it, the referring court is uncertain whether the Public Prosecutor's Office in Lübeck meets the test of independence or the test of administering criminal justice in the sense required by the Court's case-law resulting from the judgments of 29 June 2016, *Kossowski* (C-486/14, EU:C:2016:483), of 10 November 2016, *Poltorak* (C-452/16 PPU, EU:C:2016:858), of 10 November 2016, *Özçelik* (C-453/16 PPU, EU:C:2016:860), and of 10 November 2016, *Kovalkovas* (C-477/16 PPU, EU:C:2016:861), in order to be capable of being considered a 'judicial authority' within the meaning of Article 6(1) of Framework Decision 2002/584.

20 According to that court, as regards the institutional status of the public prosecutor's office in Germany, the Public Prosecutor's Office in Lübeck appears to be subordinate to the authority and to the instructions of the executive. The referring court is therefore uncertain whether the principles identified in the abovementioned case-law can be met by such a public prosecutor's office and whether the independence of the latter, in the case before the referring court, can be established solely on the ground that no direction or instruction was given by the executive in relation to the European arrest warrant issued in respect of OG.

21 In addition, the referring court states that, although the public prosecutor's office in Germany has an essential role in relation to the administration of justice, its responsibilities are distinct from those of the courts or the judges. Thus, even if the independence test is met, it is unclear whether that public prosecutor's office meets the test of administering justice or participating in the administration of justice in order that it may be classified as a 'judicial authority' within the meaning of Article 6(1) of Framework Decision 2002/584.

22 In those circumstances the Supreme Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the independence from the executive of a public prosecutor to be decided in accordance with his position under the relevant national legal system? If not, what are the criteria according to which independence from the executive is to be decided?

(2) Is a public prosecutor who, in accordance with national law, is subject to a possible direction or instruction either directly or indirectly from a Ministry of Justice, sufficiently independent of the executive to be considered a "judicial authority", within the meaning of Article 6(1) of Framework Decision 2002/584?

(3) If so, must the public prosecutor also be functionally independent of the executive and what are the criteria according to which functional independence is to be decided?

(4) If independent of the executive, is a public prosecutor who is confined to initiating and conducting investigations and assuring that such investigations are conducted objectively and lawfully, the issuing of indictments, executing judicial decisions and conducting the prosecution of criminal offences, and does not issue national warrants and may not perform judicial functions a "judicial authority", for the purposes of Article 6(1) of Framework Decision 2002/584?

(5) Is the [Public Prosecutor's Office in Lübeck] a "judicial authority" within the meaning of Article 6(1) of Framework Decision 2002/584?'

Case C-82/19 PPU

23 On 15 March 2018, PI, a Romanian national, was the subject of a European arrest warrant issued by the Public Prosecutor's Office in Zwickau (Germany) for the prosecution of a criminal offence identified as 'organised or armed robbery'. That arrest warrant was endorsed for execution by the referring court, the High Court, on 12 September 2018. PI was arrested on 15 October 2018 pursuant to that arrest warrant and has remained in custody since that date.

24 The referring court states that it is confronted with the same difficulties raised by the Supreme Court in Case C-508/18.

25 PI objected to his surrender in execution of the European arrest warrant issued in respect of him on the ground, inter alia, that the Public Prosecutor's Office in Zwickau is not a 'judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, which is competent to issue such a European arrest warrant.

26 In support of that contention, PI relied on the same legal opinion referred to in paragraph 13 of the present judgment concerning the Public Prosecutor's Office in Lübeck and on a legal opinion of the same lawyer as regards the Public Prosecutor's Office in Zwickau.

27 In those circumstances, the referring court sought further information from the Public Prosecutor's Office in Zwickau, via the Central Authority for Ireland, in relation to the evidence presented by PI as regards the status of that public prosecutor's office.

28 In a response of 24 January 2019, the Public Prosecutor's Office in Zwickau sent the referring court the national arrest warrant issued by the Amtsgericht Zwickau (Local Court, Zwickau, Germany) on which the European arrest warrant in respect of PI is based, and made clear that the national arrest warrant was issued by an independent judge. In addition, the Public Prosecutor's Office in Zwickau stated that it was, in accordance with Article 6(1) of Framework Decision 2002/584, the competent authority for issuing a European arrest warrant.

29 A further request was sent to the Office of the Public Prosecutor's Office in Zwickau asking whether it was adopting the same stance as that of the Public Prosecutor's Office in Lübeck in Case C-508/18. The Public Prosecutor's Office in Zwickau replied on 31 January 2019 as follows:

'I refer to your message of 28 January 2019 and the enclosed documents of the [Public Prosecutor's Office in Lübeck (Germany)]. With regard to the position of the [public prosecutor's office] within the legal system of the Federal Republic of Germany, I share the opinion of the [Public Prosecutor's Office in Lübeck]. I would like to add that the investigations by the [Public Prosecutor's Office in Zwickau] [concerning the prosecuted] person are carried out independently and without any political interference. Neither the [Generalstaatsanwaltschaft Dresden (Public Prosecutor General in Dresden, Germany)] nor the [Justizminister des Freistaats Sachsen (Minister for Justice of the Free State of Saxony, Germany)] have issued any instructions at any time.'

30 In that context, the High Court seeks to ascertain, as does the Supreme Court in Case C-508/18, what criteria a national court must apply in order to determine whether or not a public prosecutor's office is a 'judicial authority' within the meaning of Article 6(1) of Framework Decision 2002/584.

31 In those circumstances, the High Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the independence from the executive of a public prosecutor to be decided in accordance with his position under the relevant national legal system? If not, what are the criteria according to which independence from the executive is to be decided?

(2) Is a public prosecutor who, in accordance with national law, is subject to a possible direction or instruction either directly or indirectly from a Ministry of Justice, sufficiently independent of the executive to be considered a "judicial authority" within the meaning of Article 6(1) of Framework Decision 2002/584?

(3) If so, must the public prosecutor also be functionally independent of the executive and what are the criteria according to which functional independence is to be decided?

(4) If independent of the executive, is a public prosecutor who is confined to initiating and conducting investigations and assuring that such investigations are conducted objectively and lawfully, the issuing of indictments, executing judicial decisions and conducting the prosecution of criminal offences, and does not issue national warrants and may not perform judicial functions a "judicial authority" for the purposes of Article 6(1) of Framework Decision 2002/584?

(5) Is the [Public Prosecutor's Office in Zwickau] a "judicial authority" within the meaning of Article 6(1) of Framework Decision 2002/584?'

Procedure before the Court

Case C-508/18

32 The referring court requested that Case C-508/18 be dealt with pursuant to the expedited procedure under Article 105(1) of the

Rules of Procedure of the Court.

33 That request was dismissed by order of the President of the Court of 20 September 2018, *Minister for Justice and Equality* (C-508/18 and C-509/18, not published, EU:C:2018:766).

34 By decision of the President of the Court, Case C-508/18 was given priority over others.

Case C-82/19 PPU

35 The referring court requested that Case C-82/19 PPU be dealt with pursuant to the urgent preliminary ruling procedure under Article 107 of the Rules of Procedure.

36 In support of that request, it relied on, inter alia, the fact that PI is at present in custody, pending his being actually surrendered to the German authorities.

37 It should be noted, in the first place, that the reference for a preliminary ruling in this case concerns the interpretation of Framework Decision 2002/584, which falls within the scope of the fields referred to in Title V of Part Three of the FEU Treaty on the area of freedom, security and justice. It may therefore be dealt with under the urgent preliminary ruling procedure.

38 In the second place, according to the case-law of the Court, it is appropriate to take into account the fact that the person concerned in the main proceedings is currently deprived of his liberty and that the question of whether he remains in custody depends on the outcome of the dispute in the main proceedings (see, to that effect, judgment of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 21 and the case-law cited). According to the explanations provided by the referring court, the detention measure to which PI is subject was ordered in the context of the execution of the European arrest warrant issued in respect of him.

39 In those circumstances, on 14 February 2019 the Fourth Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to accede to the referring court's request that Case C-82/19 PPU be dealt with under the urgent preliminary ruling procedure.

40 It was also decided to remit Case C-82/19 PPU to the Court in order for it to be assigned to the Grand Chamber.

41 Given the connection between Cases C-508/18 and C-82/19 PPU, it is appropriate that they be joined for the purposes of the judgment.

Consideration of the questions referred

42 By their respective questions, which it is appropriate to consider together, the referring courts ask, in essence, whether the concept of an 'issuing judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, must be interpreted as including the public prosecutors' offices of a Member State which are responsible for the prosecution of criminal offences and are subordinate to a body of the executive of that Member State, such as a Minister for Justice, and may be subject, directly or indirectly, to directions or instructions in a specific case from that body in connection with the adoption of a decision to issue a European arrest warrant.

43 As a preliminary matter, it should be noted that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 36 and the case-law cited).

44 In particular, as far as concerns Framework Decision 2002/584, it is clear from recital 6 thereof that the European arrest warrant established by that framework decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition.

45 That principle has been applied in Article 1(2) of Framework Decision 2002/584, which lays down the rule that Member States are required to execute any European arrest warrant on the basis of that principle and in accordance with the provisions of that framework decision. Executing judicial authorities may therefore, in principle, refuse to execute such a European arrest warrant only on the grounds for non-execution exhaustively listed in Articles 3, 4 and 4a of the framework decision. Similarly, execution of the arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5. Accordingly, while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception which must be interpreted strictly (see, to that effect, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 41 and the case-law cited).

46 However, the principle of mutual recognition proceeds from the assumption that only European arrest warrants, within the meaning of Article 1(1) of Framework Decision 2002/584, must be executed in accordance with the provisions of that decision. It follows from that article that such an arrest warrant is a 'judicial decision', which requires that it be issued by a

'judicial authority' within the meaning of Article 6(1) of that framework decision (see, to that effect, judgments of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 28, and of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 29).

47 Under Article 6(1) of Framework Decision 2002/584, the issuing judicial authority is to 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.

48 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 (see, to that effect, judgments of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraphs 30 and 31, and of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraphs 31 and 32).

49 That term requires, throughout the European Union, an autonomous and uniform interpretation, which, in accordance with the settled case-law of the Court, must take into account the wording of Article 6(1) of Framework Decision 2002/584, its legislative scheme and the objective of that framework decision (see, to that effect, judgments of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 32, and of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 33).

50 In the first place, in that regard, it should be noted that the Court has previously held that the words 'judicial authority', contained in that provision, are 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 (see, to that effect, judgments of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraphs 33 and 35, and of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraphs 34 and 36).

51 It follows that the concept of a 'judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, is capable of including authorities of a Member State which, although not necessarily judges or courts, participate in the administration of criminal justice in that Member State.

52 That interpretation is borne out, first, by the legislative scheme of Article 6(1) of Framework Decision 2002/584. In that regard, it must be stated that that framework decision is a measure governing judicial cooperation in criminal matters, which concerns mutual recognition not only of final judgments delivered by the criminal courts, but more broadly of decisions adopted by the judicial authorities of the Member States in criminal proceedings, including the phase of those proceedings relating to criminal prosecution.

53 Judicial cooperation in criminal matters, as provided for in Article 31 EU, which is the legal basis for Framework Decision 2002/584, referred, inter alia, to cooperation between judicial authorities of the Member States both in relation to proceedings and the enforcement of decisions.

54 The word 'proceedings', which should be understood in a broad sense, is capable of encompassing the entirety of criminal proceedings, namely the pre-trial phase, the trial itself and the enforcement of a final judgment delivered by a criminal court in respect of a person found guilty of a criminal offence.

55 That interpretation is supported by the wording of Article 82(1)(d) TFEU, which replaced Article 31 EU, and which now states that judicial cooperation in criminal matters in the Union covers cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

56 Second, the above interpretation is also supported by the objective of Framework Decision 2002/584, which, as is clear from recital 5 thereof, is to establish a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

57 Framework Decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or accused of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice, founded on the high level of trust which should exist between the Member States in accordance with the principle of mutual recognition (judgment of 22 December 2017, *Ardic*, C-571/17 PPU, EU:C:2017:1026, paragraph 69 and the case-law cited).

58 The issuing of a European arrest warrant may thus have two distinct aims, as laid down in Article 1(1) of Framework Decision 2002/584. It may be issued either for the purposes of conducting a criminal prosecution in the issuing Member State or for the purposes of executing a custodial sentence or detention order in that Member State (see, to that effect, judgment of 21 October 2010, *B.*, C-306/09, EU:C:2010:626, paragraph 49).

59 Therefore, in so far as the European arrest warrant facilitates free movement of judicial decisions, prior to judgment, in relation to conducting a criminal prosecution, it must be held that those authorities which, under national law, are competent to adopt such decisions are capable of falling within the scope of the framework decision.

60 It follows from the considerations set out in paragraphs 50 to 59 of the present judgment that 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.

61 In the present case, it is clear from the information in the case file before the Court that, in Germany, public prosecutors' offices have an essential role in the conduct of criminal proceedings.

62 In that regard, in its observations to the Court, the German Government stated that, in accordance with the provisions of German law governing criminal proceedings, the public prosecutors' offices have the power to issue an indictment, such that only they are competent to initiate criminal prosecutions. In addition, by virtue of the principle of legality, the public prosecutor's office is, in principle, required to open an investigation in respect of any person suspected of having committed a criminal offence. Thus, it follows from that information that, in general, the part played by the public prosecutor's office is to prepare the ground, in relation to criminal proceedings, for the exercise of judicial power by the criminal courts of that Member State.

63 In those circumstances, such public prosecutors' offices are capable of being regarded as participating in the administration of criminal justice in the Member State in question.

64 In the second place, in the light of the requirement that courts must be independent, the referring courts harbour doubts as to whether the public prosecutors' offices at issue in the main proceedings satisfy that requirement, in so far as they belong to a hierarchical structure subject to the Minister for Justice of the *Land* in question and in which that minister may exercise a power of supervision and direction, or even instruction, in relation to bodies, such as those public prosecutors' offices, which are subordinate to him.

65 In that regard, it must be borne in mind that Framework Decision 2002/584 aims to introduce a simplified system of surrender directly between judicial authorities designed to replace a traditional system of cooperation between sovereign States — which involves the intervention and assessment of the executive — in order to ensure the free circulation of court decisions in criminal matters, within an area of freedom, security and justice (see, to that effect, judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 41).

66 In that context, where a European arrest warrant is issued with a view to the arrest and surrender by another Member State of a requested person for the purposes of conducting a criminal prosecution, that person must have already had the benefit, at the first stage of the proceedings, of procedural safeguards and fundamental rights, the protection of which it is the task of the judicial authorities of the issuing Member State to ensure, in accordance with the applicable provisions of national law, for the purpose, inter alia, of adopting a national arrest warrant (judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 55).

67 The European arrest warrant system therefore 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 (judgment of 1 June 2016, *Bob-Dogi*, C-241/15, EU:C:2016:385, paragraph 56).

68 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, enshrined in Article 6 of the Charter of Fundamental Rights of the European Union, 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.

69 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 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.

70 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.

71 The second level of protection of the rights of the person concerned, referred to in paragraph 67 of the present judgment, means that the judicial authority competent to issue a European arrest warrant by virtue of domestic law must review, in particular, observance of the conditions necessary for the issuing of the European arrest warrant and examine whether, in the light of the particular circumstances of each case, it is proportionate to issue that warrant (see, to that effect, judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 47).

72 It is for the 'issuing judicial authority', referred to in Article 6(1) of Framework Decision 2002/584, namely the entity which, ultimately, takes the decision to issue the European arrest warrant, to ensure that second level of protection, even where the European arrest warrant is based on a national decision delivered by a judge or a court.

73 Thus, the 'issuing judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, must be capable of exercising its responsibilities 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, such that it is beyond doubt that the decision to issue a European arrest warrant lies with that authority and not, ultimately, with the executive (see, to that effect, judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 42).

74 Accordingly, the issuing judicial authority must be in a position to give assurances to the executing judicial authority that, as regards the guarantees provided by the legal order of the issuing Member State, it acts independently in the execution of those of its responsibilities which are inherent in the issuing of a European arrest warrant. That independence requires that there are statutory rules and an institutional framework capable of guaranteeing that the issuing judicial authority is not exposed, when adopting a decision to issue such an arrest warrant, to any risk of being subject, inter alia, to an instruction in a specific case from the executive.

75 In addition, 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.

76 In the present case, it is, on the one hand, clear from the information set out in the orders for reference, which were confirmed by the German Government at the hearing before the Court, that German public prosecutors' offices are required to act objectively and must investigate not only incriminating but also exculpatory evidence. Nevertheless, the fact remains that, according to that same information, in accordance with Paragraphs 146 and 147 of the GVG, the Minister for Justice has an 'external' power to issue instructions in respect of those public prosecutors' offices.

77 As that government confirmed at the hearing before the Court, that power to issue instructions enables that minister to have a direct influence on a decision of a public prosecutor's office to issue or, in some cases, not to issue a European arrest warrant. That government made clear that that power to issue instructions could be exercised, in particular, at the stage when the proportionality of issuing a European arrest warrant is examined.

78 Admittedly, it should be noted that, as is argued by the German Government, German law provides safeguards which are capable of circumscribing the power to issue instructions enjoyed by the Minister for Justice in respect of the public prosecutor's office, so that the situations in which that power could be exercised are extremely rare.

79 Thus, first, that government stated that the effect of the principle of legality which applies to the actions of the public prosecutor's office is to ensure that any instructions in a specific case which it may receive from the Minister for Justice cannot in any event exceed the limits of the law, statutory or otherwise. It stated that the public prosecutors' offices of the *Länder* of Schleswig-Holstein and of Saxony are, in addition, staffed by officials who cannot be dismissed from their positions simply on account of failure to comply with an instruction. Second, the German Government stated that, in the *Land* of Schleswig-Holstein, instructions from the minister to the public prosecutor's office must be made in writing and notified to the President of the State Parliament. According to the German Government, in the *Land* of Saxony, the coalition agreement for the government of that *Land* provides that the minister for justice's power to issue instructions is not to be exercised in a certain number of specific cases for the duration of that agreement.

80 However, it is clear that such safeguards, assuming that their existence were to be established, cannot wholly rule out the possibility, in all circumstances, that a decision of a public prosecutor's office, such as those at issue in the cases in the main proceedings, to issue a European arrest warrant may, in a given case, be subject to an instruction from the minister for justice of the relevant *Land*.

81 First of all, although, in accordance with the principle of legality, an instruction from the minister which is manifestly unlawful should not, in principle, be followed by the relevant public prosecutor's office, it should be noted that, as is clear from paragraph 75 of the present judgment, that minister's power to issue instructions is laid down in the GVG, and the GVG does not specify the conditions governing the exercise of that power. The existence of that principle is not therefore, in itself, capable of preventing the minister for justice of a *Land* from influencing the discretion enjoyed by the public prosecutors' offices of that *Land* in deciding to issue a European arrest warrant, which the German Government did moreover confirm at the hearing before the Court.

82 Second, although in certain *Länder*, such as the *Land* of Schleswig-Holstein, instructions from the minister must be given in writing, the fact remains that, as stated in the previous paragraph, such instructions are nevertheless authorised by the GVG. In addition, it is clear from the submissions made at the hearing before the Court that, in the light of the fact that that law is couched in general terms, it cannot, in any event, be ruled out that such instructions may be given orally.

83 Last, as regards the *Land* of Saxony, although, at this particular point in time, the executive has decided not to exercise the power to issue instructions in certain specific cases, the fact remains that that safeguard does not appear to cover all cases. In any event, that safeguard has not been enacted in statutory form, so that it cannot be ruled out that the situation may be changed in the future by political decision.

84 As set out in paragraph 73 of the present judgment, the risk that the executive may influence a public prosecutor's office in such a way in a specific case means that it cannot be ensured that, in fulfilling its responsibilities for the purposes of the issuing of a European arrest warrant, that public prosecutor's office satisfies the guarantees referred to in paragraph 74 of the present judgment.

85 That finding cannot be called into question by the fact that, as argued by the German Government at the hearing before the Court, the decision of public prosecutors' offices, such as those at issue in the main proceedings, to issue a European arrest warrant may be the subject of an action brought by the person concerned before the relevant German court having jurisdiction.

86 As regards the information provided by that government, it does not appear that the existence of such an action is capable per se of protecting public prosecutors' offices from the risk that their decisions may be the subject of an instruction, in a specific case, from the minister for justice in connection with the issuing of a European arrest warrant.

87 Although the effect of that legal remedy is to ensure that the exercise of the responsibilities of a public prosecutor's office is subject to the possibility of review by a court a posteriori, any instruction in a specific case from the minister for justice to the public prosecutors' offices concerning the issuing of a European arrest warrant remains nevertheless, in any event, permitted by the German legislation.

88 It follows from the foregoing that, in so far as the public prosecutors' offices at issue in the main proceedings are exposed to the risk of being influenced by the executive in their decision to issue a European arrest warrant, those public prosecutors' offices do not appear to meet one of the requirements of being regarded as an 'issuing judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, namely the requirement that it be guaranteed that they act independently in issuing such an arrest warrant.

89 In the present case, it is, in that regard, irrelevant, for the reasons stated in paragraph 73 of the present judgment, that, in connection with the issuing of the European arrest warrants at issue in the main proceedings, no instruction in a specific case was issued to the public prosecutor's office in Lübeck or in Zwickau from the ministers for justice of the *Länder* concerned.

90 In the light of all the foregoing, the answer to the questions referred is that the concept of an 'issuing judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, must be interpreted as not including public prosecutors' offices of a Member State 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.

Costs

91 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national courts, the decision on costs is a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Cases C-508/18 and C-82/19 PPU are joined for the purposes of the judgment.**

2. **The concept of an 'issuing judicial authority', within the meaning of Article 6(1) of 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, must be interpreted as not including public prosecutors' offices of a Member State 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.**

[Signatures]

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* Language of the case: English.