

Autonomous Prosecution Services and relationship with the executive: EU Prosecution Services and ECJ Jurisprudence on the EAW

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Overview

- Introduction
- Legal provisions
- Bob-Dogi
- Judicial decision
- Judicial authority
- Reactions

Introduction

- 59 Rulings of the ECJ on the interpretation of the Framework decision on the European Arrest Warrant
- 15 thereof interpreting „judicial authority“ and „judicial decision“
- Focus on the concept of independence and access to a court
- Jurisprudence of the ECJ caused amendments of the law of some MS or at least vivid discussions on the possible amendment of the law

Legal provisions

- Framework Decision on the European Arrest Warrant of 13 June 2002
- Article 1 para 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.*
- Article 6 para 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.*

Legal provisions

- Article 6 para 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.*
- Article 7 para 1: *Each Member State may designate a **central authority** or, when its legal system so provides, more than one central authority **to assist the competent judicial authorities.***
- Article 7 para 2: *A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its **central authority(ies)** responsible for the **administrative transmission and reception of European arrest warrants** as well as for all other official correspondence relating thereto.*

Legal provisions

- Article 8 para 1 c: *The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:*

*evidence of an **enforceable judgment, an arrest warrant or any other enforceable judicial decision** having the same effect, coming within the scope of Articles 1 and 2;*

Request for preliminary ruling Bob-Dogi (C-241/15)

- EAW issued on 23 March 2015 by a Hungarian District Court against a Romanian national for serious bodily harm. The offences related to a road traffic accident for which Mr Bob-Dogi was responsible.
- Arrest of Mr Bob-Dogi on 2 April 2015 in Romania.
- Romanian Court ordered on the same day the release
- Point (b) of the EAW „Decision on which the arrest warrant is based“ stated „Public Prosecutors Office attached to the Court“ and **Point b (1)** – referring to the details of the arrest warrant or judicial decision – stated „EAW issued by the HU Court, also covering the territory of Hungary, **thus constituting, at the same time, a national arrest warrant**“

Request for preliminary ruling Bob-Dogi (C-241/15)

- RO Court considered that
 - the decision that must be recognized must be a national judicial decision;
 - there are fundamental differences between a EAW and a national arrest warrant
 - the issue of an EAW is based on an arrest warrant or relating to the execution of a custodial sentence
 - in absence of a national arrest warrant, a person cannot be held in custody
 - EAW cannot be transformed into a national arrest warrant

Request for preliminary ruling Bob-Dogi (C-241/15)

- Questions to the ECJ:
 1. Must the expression „evidence of an EAW“ be understood to refer to a national arrest warrant ... and therefore distinct from the EAW?
 2. May the non-existence of a national arrest warrant constitute an implied reason for non-execution of the EAW?

Request for preliminary ruling Bob-Dogi (C-241/15)

- Ruling of the ECJ:
 - Principle of mutual recognition, high level of confidence between MS
 - Equivalent and effective protection of the fundamental rights within the EU-MS
 - Definition, wording and context of EAW refers to an arrest warrant other than the EAW („*decision on which the EAW is based*“)
 - EAW system provides for a dual level of protection (national arrest warrant + EAW) which misses if the EAW replaces the national arrest warrant
 - **„Arrest warrant“ = national arrest warrant distinct from the EAW**
 - **Executing judicial authority may refuse such an EAW**

Judicial Decision/Judicial authority

- C-452/16 PPU (Poltorak) 10.11.2016
- C-453/16 PPU (Özcelik) 10.11.2016
- C-477/16 PPU (Kovalkovas) 10.11.2016
- **Judicial authority** is not limited to designating only the judges or courts of a MS, but **may extend to the authorities required to participate in administering justice in the legal system concerned**
- **Police services** are within the province of the executive which must be distinguished from the judiciary (principle of separation of powers)
- EAW issued by a Police service cannot be considered as „judicial decision“ within the meaning of Article 1 (1) FD EAW

Judicial decision/judicial authority

- The term „**judiciary**“ **does not cover the ministries** of MS which are within the province of the executive
- Ministry of Justice may be covered by the term „**central authority**“ which is limited to provide practical and administrative assistance to the competent judicial authorities
- EAW issued by a Court referring to a national arrest warrant issued by police authorities and confirmed by a public prosecutor = judicial decision (*Özcelik*)
- **Judicial authority** = authorities that administer criminal justice excluding police services

Judicial decision/judicial authority

- **Public Prosecutor's Offices** are authorities administering criminal justice, their decisions must be regarded as judicial decisions with regard to Article 8 (1) c FD EAW

Judicial decision/judicial authority

- C-508/18, C-82/19 PPU (Minister for Justice and equality) 27.5.2019
- C-509/18 (Minister for Justice and equality) 27.5.2019
- C-489/19 (StA Wien) 9.10.2019
- C-510/19 (Openbaar Ministerie) 24.11.2020
- C-566/19 PPU (Parquet général) 12.12.2019
- C-626/19 PPU (Openbaar Ministerie) 12.12.2019
- C-625/19 PPU (Openbaar Ministerie) 12.12.2019
- C-627/19 PPU (Openbaar Ministerie) 12.12.2019

Judicial decision/judicial authority

- A public prosecutor's office which is competent in criminal proceedings to prosecute a person must be regarded as **participating in the administration of justice**
- The EAW system entails a **dual level of protection** of procedural and fundamental rights: 1. national arrest warrant, 2. EAW
- at least at one of the two levels must be a decision meeting the requirements of **effective judicial protection** (Article 6 of the Charter of Fundamental Rights of the EU)

Judicial decision/Judicial authority

- **Second level of protection:** judicial authority issuing an EAW must examine if it is **proportionate to issue an EAW**
- Issuing judicial authority must be **capable of exercising its responsibilities objectively**, taking into account all evidence **without being exposed to the risk that its decision-making power will be subject to external directions or instructions**, in particular from the executive
- Issuing authority must be **independent, not exposed to instructions in a specific case**
- Independence must be **guaranteed in the statutory and institutional framework** of the MS

Judicial decision/Judicial authority

German Public Prosecutors Office:

Main question: Does the concept of “*issuing judicial authority*” include the public prosecutors’ offices of a Member State, which are subordinate to a body of the executive 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 an EAW?

ECJ ruling: not a judicial authority, not independent, insofar as it belongs to a hierarchical structure subject to the Minister for Justice who may exercise power of supervision, direction and instruction

Judicial Decision/Judicial authority

Lithuanian Prosecutor General

Main question: Does the concept of “issuing judicial authority” include the prosecutor general of a Member State, who, although institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and is independent from the executive?

ECJ ruling: = judicial authority, independent according to the Constitution of Lithuania, acts free of any external influence

Judicial authority/Judicial decision

Austrian Public Prosecutor:

Main question: Does the fact that a public prosecutor's office is required to act on instruction preclude it from effectively issuing an EAW even in the case where that decision is subject to a comprehensive judicial review prior to the execution of the EAW?

ECJ Ruling: = judicial authority, since AT law provides for an endorsement of the national arrest warrant and the EAW by a Court which has access to the file

Judicial decision/Judicial authority

- Dutch Public Prosecutor = no judicial authority, subject to instructions;
- French Public Prosecutor = judicial authority, decision is subject to control by a court under national law
- Swedish Public Prosecutor = judicial authority, decision is subject to control by a court under national law
- Public Prosecutor of Belgium = judicial authority, EAW to execute a custodial sentence
- Bulgarian Public Prosecutor = no judicial authority, no judicial review (C-648/20 PPU, 10.3.2021)

Reactions

- Eurojust questionnaire, revised in April 2021: 22 MS responded that Public Prosecutors are not subject to instructions, 4 MS advised that this is possible, 3 States did not address the question