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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. Carroll, 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.

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