

# CJEU: “Executing Judicial Authority” Follows Same Criteria as “Issuing Judicial Authority”

Thomas Wahl

On 24 November 2020, in its [judgment in Case C-510/19](#), the CJEU further defined the notion “executing judicial authority” pursuant to Art. 6(2) of Framework Decision (FD) 2002/584/JHA on the European Arrest Warrant (EAW). Accordingly, Dutch public prosecutors are not an “executing judicial authority,” as they may be subject to individual instructions from the Minister of Justice. The case at issue dealt with the question of whether the Dutch public prosecutor was empowered to consent to an exception to the speciality rule (Art. 27 FD EAW), as a consequence of which a defendant could be prosecuted and convicted for offences other than those for which he had previously been surrendered to Belgium (for the facts of the [case C-510/19](#) (*AZ v Openbaar Ministerie and YU And ZV*) and the opinion of AG Campos Sánchez-Bordona → [eu crim 2/2020, 112](#)).

The CJEU followed the AG’s conclusions. It first states that, like the concept of “issuing judicial authority,” the concept of executing judicial authority as defined in Art. 6(2) FD EAW requires an autonomous interpretation of EU law. It is not restricted to designated judges or courts but also covers judicial authorities which participate in the administration of criminal justice in the Member State concerned. This, however, requires that they act independently in the exercise of their responsibilities and carry out their tasks under a procedure that complies with the requirements of effective judicial protection.

Therefore, the CJEU considers its case law on the concept of “issuing judicial authority” to be transferable. Consequently, the same criteria apply in order to determine the content of the concept of “executing judicial authority.” The CJEU justifies its conclusion by stating, *inter alia*, that, just as the issue of an EAW, also the execution is capable of prejudicing the liberty of the requested person. In addition, there is no dual level of protection of fundamental rights if the executing judicial authority intervenes, unlike the procedure for the issuing of an EAW.

Secondly, the Court holds that, irrespective of whether the judicial authority consenting to disapplying the rule of speciality must be the same as the authority which executed the EAW, this consent cannot be given by the public prosecutor of a Member State. Even though the public prosecutor participates in the administration of justice – in exercising his or her decision-making power – he/she may receive an instruction from the executive in a specific case. In order to give the consent concerned, the intervention of an authority must satisfy the above-mentioned conditions of independence and judicial protection. The CJEU reiterates that the decision is liable to prejudice the liability of the person concerned since he/she may receive a heavier sentence.

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Since the Dutch public prosecutor may receive instructions from the Dutch Minister of Justice in specific cases, he/she does not constitute an “executing judicial authority.” Therefore, the consent given by the Netherlands to disapply the speciality rule is void.

This leads to the conclusion that the German Public Prosecutor’s Office, which is also bound by instructions, is not an executing judicial authority within the meaning of the FD EAW (→ [Joined Cases C-508/18 \(OG\) and C-82/19 PPU \(PI\)](#) = [eucrim 1/2019, 31-32](#)). The public prosecutor’s offices in Lithuania (→ [eucrim 1/2019, 33-34](#)), France, Sweden, and Belgium (→ judgments delivered on 12 December 2019 in [Joined Cases C-556/19 PPU and C-626/19 PPU](#), [Case C-625/19 PPU](#), and [Case C-627/19 PPU](#) = [eucrim 4/2019, 242-245](#)), however, are to be understood as bodies independent of the executive and as executing judicial authorities according to the case law of the CJEU.

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