

# Lithuanian Prosecutor General Included in the Concept of “Judicial Authority” in the FD EAW

Thomas Wahl

The Prosecutor General of Lithuania can be considered a “judicial authority” that can issue European Arrest Warrants, under the condition that his/her decisions are subject to court proceedings fully meeting the requirements inherent to effective judicial protection. It is up to the referring court to determine the latter.

## Context of the Case

The Grand Chamber of the CJEU concluded this finding in its [judgment](#) of 27 May 2019 in [case C-509/18 \(PF\)](#). It was rendered in parallel to its judgment of the same day in the [joined cases C-508/18 \(OG\) and C-82/19 PPU \(PI\)](#) – see separate [euclid news](#) . All cases were referred by Irish courts (case C-509/18 by the Irish Supreme Court); persons requested for surrender via European Arrest Warrants claimed that the issuing public prosecution offices are not competent to issue EAWs because they lack the independence required to be a “judicial authority” within the meaning of Art. 6(1) of Framework Decision 2002/584/JHA on the European Arrest Warrant (FD EAW).

The cases build on the case law in cases [C-452/16 PPU \(Poltorak\)](#), [C-477/16 \(Kovalkovas\)](#), and [C-453/16 \(Özcelik\)](#) – see [euclid 4/2016, 165-167](#)– in which the CJEU first established several criteria according to which the authority may be regarded as “judicial” within the EAW scheme. The referring Irish courts doubted whether the so-called independence and administering of criminal justice tests – as described in the aforementioned case-law – are fulfilled if public prosecutors from other EU Member States issue EAWs on the basis of the FD.

Whereas the question in the joined cases C-508/18 and C-82/19 PPU relate to the German public prosecution office, the present case C-509/18 concerns the Prosecutor General of Lithuania.

## Facts of the Case

In the case at issue, the Prosecutor General of Lithuania issued a European Arrest Warrant for the surrender of a Lithuanian national PF who was prosecuted for “armed robbery,” allegedly committed in 2012. PF challenged the validity of the EAW on the grounds, *inter alia*, that the Prosecutor General is not an “issuing judicial authority” within the meaning of Art. 6(1) FD EAW. He argued that, according to the case law of the Lithuanian constitutional court, a public prosecutor is not responsible for the administration of justice. In the appeal proceedings against execution of the EAW, the Irish Supreme Court followed this argumentation and identified that the CJEU’s case law as regards the definition of “judicial authority” pursuant to Art. 6(1) FD

## AUTHOR

**Thomas Wahl**

Senior Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

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EAW is incomplete. The Irish Supreme Court mainly asked the CJEU for more concrete criteria that allow the national courts to determine the “judicial authority” for the purposes of the FD EAW.

### **The CJEU's Ruling**

The CJEU first clarified that the essential question in the given case is whether the Prosecutor General of a Member State can be included in the concept of an “issuing judicial authority” within the meaning of Art. 6(1) FD EAW. In contrast to the parallel cases C-508/18 and C-82/19 concerning the German public prosecution office, the CJEU highlighted that the following characteristics of the Lithuanian Prosecutor General must be taken into account:

- Institutionally independence from the judiciary;
- Responsibility for conducting criminal prosecutions;
- Independence from the executive.

The judges in Luxembourg then deliberated the criteria and parameters for determining the “issuing judicial authority” as established in the joined cases C-508/18 and C-82/19. In particular, the concept requires an autonomous and uniform interpretation at the EU level.

First of all, it must be established whether the authority at issue is “participating in the administration of criminal justice” in a Member State. In this context, it follows from the FD EAW that the concept of “judicial authority” not only refers to judges and courts, but may also encompass other authorities involved in the criminal proceedings. These authorities must, however, be capable of adopting decisions in relation to conducting criminal proceedings. For example, the Prosecutor General in Lithuania is capable of being regarded as participating in the administration of criminal justice in the Member State in question.

Secondly, if the EAW was not issued by a judge or court, the competent authority must act independently. In particular, it must have sufficient power to protect the individual's procedural and fundamental rights when issuing an EAW. Therefore, the issuing authority must have the following capacities:

- Exercise its functions objectively;
- Take into account all incriminatory and exculpatory evidence;
- Not be exposed to the risk that its decision-making powers are subject to external directions/ instructions, in particular from the executive.

In addition, sufficient protection means that the decision on issuing a European Arrest Warrant meets “the requirements inherent in effective judicial protection” (if the decision was not adopted by a judge or a court).

The CJEU found that the legal position of the Prosecutor General of Lithuania safeguards not only the objectivity of his role, but also affords him a guarantee of independence from the executive in connection with the issuing of an EAW. The CJEU could not, however, ascertain whether a decision of the Prosecutor General to issue an EAW may be the subject of court proceedings “which meet in full the requirements inherent in effective judicial protection.” This is ultimately for the referring court to determine.

### **Put in Focus:**

Together with the judgment in the joined cases C-508/18 and C-82/19 PPU, the CJEU supplements its case law as to the extent to which the executing judicial authority can be sure that an EAW has been issued by a “judicial authority” as required by the FD EAW. Both judgments must be read together, and the previous judgments in the aforementioned cases decided in 2016 (“Poltorak,” “Kovalkovas,” and “Özcelik”) must also be taken into account. In further clarifying the criteria of the concept of “judicial authority,” the CJEU's approach does, however, require the executing authority to assess the status of public prosecution offices in each

individual Member State if they issue EAWs. This not only leads to uncertainties, but may also delay surrender.

In its *opinion of 30 April 2019*, Advocate-General *Manuel Campos Sánchez-Bordona* tried to avoid this consequence. He proposed excluding the institution of public prosecutors' offices from the concept of "issuing judicial authority." He argued that independence can only be recognised for the judiciary, but not for the public prosecutor's office. The Grand Chamber disagreed with this view in case C-509/18

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