



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

27 May 2019*

(Reference for a preliminary ruling — 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 the Prosecutor General of a Member State — Legal position — Guarantee of independence)

In Case C-509/18,

REQUEST 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, in proceedings relating to the execution of a European arrest warrant issued in respect of

PF,

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

after considering the observations submitted on behalf of:

- PF, by J. Ferry, Barrister-at-Law, and R. Munro, Senior Counsel, instructed by D. Rudden and E. Rudden, Solicitors,
- 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,

* Language of the case: English.

- 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 This request for a preliminary ruling concerns 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 request has been made in proceedings in Ireland concerning the execution of a European arrest warrant issued on 18 April 2014 by the Lietuvos Respublikos generalinis prokuroras (Prosecutor General's Office of the Republic of Lithuania; 'the Prosecutor General of Lithuania') for the purposes of the prosecution in Lithuania of PF.

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 case 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. ...’

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

- 9 On 18 April 2014, the surrender of PF, a Lithuanian national, was sought pursuant to a European arrest warrant issued by the Prosecutor General of Lithuania for the prosecution of a criminal offence which PF allegedly committed in 2012 and which, according to the public prosecutor, must be identified as ‘armed robbery’.
- 10 PF brought an action before the High Court challenging the validity of that European arrest warrant, on the ground, *inter alia*, that the Prosecutor General of Lithuania is not a ‘judicial authority’ within the meaning of Article 6(1) of Framework Decision 2002/584.
- 11 In support of that contention, PF relied on a legal opinion of a Lithuanian lawyer which stated, *inter alia*, that, in accordance with Article 109 of the Constitution of the Republic of Lithuania, the administration of justice in that State falls within the exclusive competence of the courts of law. The Prosecutor General of Lithuania is the most senior public prosecutor in Lithuania. He has the status of a public prosecutor and is independent both of the executive and of the judiciary. In respect of public prosecutors, Article 118 of that constitution provides that their function is to organise and direct pre-trial criminal investigations and to conduct criminal prosecutions. However, according to the case-law of the Lietuvos Respublikos Konstitucinis Teismas (Constitutional Court of the Republic of Lithuania), a public prosecutor is not responsible for the administration of justice and he also does not perform any functions related to the administration of justice during any pre-trial criminal investigation for which he is responsible.
- 12 In those circumstances, the High Court sought information from the Prosecutor General of Lithuania, via the Central Authority for Ireland, as to whether that public prosecutor 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).
- 13 The Prosecutor General of Lithuania replied as follows:

‘The [Prosecutor General of Lithuania] is independent of the executive ... as well as [of] the Ministry of Justice.

[The] Prosecution Service of the Republic of Lithuania ... is comprised of the [Prosecutor General of Lithuania] and territorial prosecutor’s offices; the Lithuanian Prosecution Service organises and directs pre-trial investigation[s] and ensures the prosecution of criminal [offences] in the name of the State. These provisions are laid down in Article 118 of the Constitution of the Republic of Lithuania.’

- 14 On 27 February 2017 the High Court held that the Prosecutor General of Lithuania is a ‘judicial authority’ within the meaning of Article 6(1) of Framework Decision 2002/584 and ordered the surrender of PF.
- 15 In a judgment of 20 October 2017, the Court of Appeal (Ireland) dismissed PF’s appeal against the judgment of the High Court and held that the Prosecutor General of Lithuania is a ‘judicial authority’ within the meaning of that provision.
- 16 The referring court, the Supreme Court (Ireland), granted leave to appeal against the judgment of the Court of Appeal.
- 17 In the light of 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), the Supreme Court asks whether the Prosecutor General of Lithuania may be categorised as a ‘judicial authority’ within the meaning of Article 6(1) of Framework Decision 2002/584.
- 18 In particular, the Supreme Court considers that it is clear from the case-law of the Court of Justice that a categorisation of that sort depends upon the question whether the body at issue constitutes an authority responsible for participating in the administration of criminal justice in a Member State. However, that case-law does not provide any clear criteria for the purposes of determining whether a body is an authority which administers justice or is required to participate in the administration of justice in the legal system of a Member State.
- 19 In that regard, the referring court asks, in the light of the fact that the concept of ‘judicial authority’ is an autonomous concept of EU law, whether, for the purposes of determining whether the Prosecutor General of Lithuania participates in the administration of justice, it should rely solely on the national law of the Member State in question. Furthermore, that court seeks to ascertain whether being responsible for pre-trial investigations and the prosecution of criminal offences is sufficiently linked to the administration of justice that a prosecutor who has those functions, but is independent of the judiciary according to national law, may be considered to be a ‘judicial authority’ within the meaning of Article 6(1) of Framework Decision 2002/584.
- 20 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) Are the criteria according to which to decide whether a public prosecutor designated as an issuing judicial authority for the purposes of Article 6(1) of [Framework Decision 2002/584] is a judicial authority within the autonomous meaning of that phrase in Article 6(1) of [Framework Decision 2002/584] that the public prosecutor is: (a) independent from the executive and (b) considered in his own legal system to administer justice or participate in the administration of justice?
- (2) If not, what are the criteria according to which a national court should determine whether a public prosecutor who is designated as an issuing judicial authority for the purposes of Article 6(1) of [Framework Decision 2002/584] is a judicial authority for the purposes of Article 6(1)?
- (3) Insofar as the criteria include a requirement that the public prosecutor administer justice or participate in the administration of justice is that to be determined in accordance with the status he holds in his own legal system or in accordance with certain objective criteria? If, objective criteria what are those criteria?
- (4) Is the [Prosecutor General of Lithuania] a judicial authority within the autonomous meaning of that phrase in Article 6(1) of [Framework Decision 2002/584]?’

Consideration of the questions referred

- 21 By its questions, which it is appropriate to consider together, the referring court asks, 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 Prosecutor General of a Member State who, whilst institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and is independent from the executive.
- 22 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).
- 23 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.
- 24 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).
- 25 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 the 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).
- 26 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.
- 27 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).
- 28 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).

- 29 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 the 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).
- 30 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.
- 31 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.
- 32 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.
- 33 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.
- 34 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.
- 35 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.
- 36 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).
- 37 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).

- 38 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.
- 39 It follows from the considerations set out in paragraphs 29 to 38 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.
- 40 In the present case, it is clear from the information in the case file before the Court that the Prosecutor General of Lithuania has an essential role in the conduct of criminal proceedings in that Member State.
- 41 In that regard, in its written observations, the Lithuanian Government stated that, in accordance with Article 118 of the Constitution of the Republic of Lithuania, the functions of the public prosecutor include, inter alia, the organisation and direction of criminal investigations and the power to issue an indictment. According to the case-law of the Lietuvos Respublikos Konstitucinis Teismas (Constitutional Court of the Republic of Lithuania), those functions may be exercised only by the public prosecutor. Thus, it follows from that information that, in general, the part played by the Prosecutor General of Lithuania is to prepare the ground, in relation to criminal proceedings, for the exercise of judicial power by the criminal courts of that Member State.
- 42 In those circumstances, the Prosecutor General of Lithuania is capable of being regarded as participating in the administration of criminal justice in the Member State in question.
- 43 In the second place, 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).
- 44 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).
- 45 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).
- 46 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.

- 47 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.
- 48 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.
- 49 The second level of protection of the rights of the person concerned, referred to in paragraph 45 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).
- 50 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.
- 51 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).
- 52 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.
- 53 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.
- 54 In the present case, it is clear from the written observations of the Lithuanian Government that in Lithuania the responsibility for the issuing of European arrest warrants ultimately lies with the Prosecutor General of Lithuania who acts on a request from the specific public prosecutor dealing with the case in connection with which the surrender of the person concerned is sought. In exercising the powers conferred on him, the Prosecutor General of Lithuania must satisfy himself that the requirements necessary in order to issue a European arrest warrant are met, in particular that a

judicial decision having the immediate effect of remanding that person in custody has been made and that, in accordance with Lithuanian law, that decision has been made by a judge or a pre-trial investigation court.

- 55 The Lithuanian Government also stated in its written observations that, in exercising their functions, Lithuanian public prosecutors enjoy the benefit of independence conferred by the Constitution of the Republic of Lithuania, in particular in the third paragraph of Article 118 thereof, and by the provisions of the Lietuvos Respublikos prokuratūros įstatymas (Law on the Public Prosecutor's Office of the Republic of Lithuania). Since the Prosecutor General of Lithuania is a public prosecutor, he has the benefit of that independence, which allows him to act free of any external influence, inter alia from the executive, in exercising his functions, in particular when he is to decide, as in the case in the main proceedings, whether to issue a European arrest warrant for the purposes of prosecution. In that capacity, the Prosecutor General of Lithuania is also required to ensure respect for the rights of the persons concerned.
- 56 In the light of those factors, it is apparent that the Prosecutor General of Lithuania may be considered to be an 'issuing judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584, in so far as, in addition to the findings in paragraph 42 of the present judgment, his legal position in that Member State 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 a European arrest warrant. Nevertheless, it cannot be ascertained from the information in the case file before the Court whether a decision of the Prosecutor General of Lithuania to issue a European arrest warrant may be the subject of court proceedings which meet in full the requirements inherent in effective judicial protection, which it is for the referring court to determine.
- 57 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 including the Prosecutor General of a Member State who, whilst institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and whose legal position, in that Member State, affords him a guarantee of independence from the executive in connection with the issuing of a European arrest warrant.

Costs

- 58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. 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:

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 including the Prosecutor General of a Member State who, whilst institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and whose legal position, in that Member State, affords him a guarantee of independence from the executive in connection with the issuing of a European arrest warrant.

[Signatures]