



FISCALIA GENERAL DEL ESTADO

UNIDAD DE COOPERACION INTERNACIONAL

**THE INDEPENDENCE OF THE SPANISH PROSECUTION OFFICE AND ITS
LACK OF COMPETENCE AS ISSUING AUTHORITY FOR EUROPEAN
ARREST WARRANTS**

The Spanish Prosecution Office is a constitutional body regulated in Article 124 of the Constitution, pursuant to which

“1. The Office of the Public Prosecutor, without prejudice to the functions entrusted to other bodies, has as its mission that of promoting the operation of justice in the defence of the rule of law, of citizens' rights and of the public interest as safeguarded by the law, whether ex officio or at the request of interested parties, as well as that of protecting the independence of the Courts and securing through them the satisfaction of social interest.

2. The Office of Public Prosecutor exercises its duties through its own bodies in accordance with the principles of unity of action and hierarchical dependency, subject in all cases to the principles of the rule of law and of impartiality.

3. The organic statute of the Office of the Public Prosecutor shall be regulated by law.

4. The State Public Prosecutor shall be appointed by the King on being nominated by the Government, after consultation with the General Council of the Judiciary.”

The Prosecution Service is a fully independent and autonomous body, fully detached from the public Administration with respect to its constitutional mandate, functions and tasks. According to Article 1 of the Law 50/81 on the organic statute of the Prosecution Service “the mission of the Prosecution Service is to further justice in the defense of law and order, citizens’ rights and the public interest protected under law, ex officio or at the request of the parties concerned, and safeguard the independence of the courts while securing the social interest through their intervention” and Article 2 states that it is “a body of constitutional significance with legal personality, integrated in the Judiciary but operating independently thereof. It pursues its mission with its own resources in keeping with the principles of uniformity in service provision and hierarchical accountability and subject at all times to those of legality and impartiality”.

Neither the Government, nor other public administrative authorities can address any orders or instructions to the Prosecution Service, it can only request the Prosecutor General to take action in defence of the public interest, if such circumstance occurs, the



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Prosecutor General will consult with the Board of High Prosecutors and will decide on the request (Article 8 of the Law 50/81 on the organic statute of the Prosecution Service).

Having said so, in Spain the prosecutor has no competence to issue or execute a European arrest warrant. According to Article 34 of the Law 23/2014 on mutual recognition of judicial decisions within the European Union, which compiles in one single piece of legislation all mutual recognition instruments, the court which is in charge of the investigation (investigative judge), the trial phase (sentencing court) or the execution phase (enforcement court) is the only competent authority to issue the European investigation order.

Despite the fact that the competent authority is the judge or court in charge of the case, the prosecutor will participate at an earlier stage; as a way to grant the principle of proportionality in the European arrest warrant, it can only be issued upon request of the prosecutor in charge of the case or the private accusation (Article 39 (3)).