



REPUBLIC OF BULGARIA MINISTRY OF JUSTICE

Reference: The independence of the Bulgarian prosecutors as an “issuing judicial authority” in the context of the Court of Justice of the European Union judgments in joined cases C–508/2018 and C–82/2019, and in case C–509/2018

The Constitution of the Republic of Bulgaria proclaims that the prosecutors are part of the independent judiciary and when performing their functions the prosecutors (as well judges, jurors and investigative magistrates) are subservient only to the law (Constitution, Chapter Six “Judiciary”, Article 117, para.2).

The Prosecutors College of the Supreme Judicial Council has the power to appoint, promote, transfer and release from office the prosecutors, to carry out the appraisals of the prosecutors and to decide on the acquisition of tenure, as well as to decide on the disciplinary responsibility of the prosecutors. (Articles 129, para.1 and 130a, para. 5, Constitution and Articles 30, para. 5 and 160, Law on Judiciary). The executive neither supervises nor participates in process of taking the decisions on prosecutors’ appointment, career, attestation and discipline.

The Bulgarian prosecutors are empowered to pursue criminal investigation in order to bring persons to court and to execute convictions envisaging the punishment of deprivation of liberty which have entered into force. In this sense, they are deemed to be authorities taking part in the administration of criminal justice. As an authority in charge of criminal proceedings, the Bulgarian prosecutors are bound by the main principles of the Criminal Procedure Code (CPC), namely: independence of the authorities of criminal proceedings (Article 10, CPC); obligation to disclose the objective truth, including through the obligation to gather and assess aggravating and mitigating evidence (Article 13, CPC); taking decisions as per one’s inner conviction (Article 14, CPC) and respect for the inviolability of the individual (Article 17, CPC). Again, the executive does not have any means to supervise, instruct or control the actions of the prosecutors, including on a specific criminal case. The decision on how a criminal case should be proceeded is a sole responsibility of the prosecutor in charge in accordance with the law and his or her inner conviction.

Under the Law on the Extradition and European Arrest Warrant the prosecutor is designated as an “issuing judicial authority” of an EAW in two cases – on the pre-trial stage of the criminal proceedings, for an accused person, or for a sentenced person. At the pre-trial stage the prosecutor takes a decision for issuing an EAW based on a warrant issued by him/her with a guarantee that after surrendering of the requested person he/she will be brought to the court for confirmation or substitution of the restrain measure. The EAW can also be issued by the prosecutor based on a decision of the court to impose a restrain measure to the accused

person. Where the EAW is issued for the purpose of enforcing a sentence, the prosecutor's decision is based on the enforceable sentence, pronounced by a court.

The Constitutional guarantees for the prosecutors' independence, reinforced by the provisions of the Law on Judiciary and the Criminal Procedure Code ensures the complete independence of the Bulgarian prosecutors from the executive when performing their duties, including when exercising their powers as "issuing judicial authorities" under the Law on the Extradition and the European Arrest Warrant and the Framework Decision 2002/584/JHA. Therefore, the Bulgarian prosecutors meet the requirements of objectivity laid down in § 73 of the judgment in joined cases C-508/2018 and C-82/2019 and in § 51 of the judgment in case C-509/2018.

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