



**Certification that a Swedish prosecutor is a judicial authority in accordance with Article 6.1 of the framework decision concerning a European arrest warrant and surrender between member states**

A prosecutor's independence

Chapter 11 Section 3 of the Instrument of Government (the Constitution of Sweden) states that no public authority (government) nor the Swedish parliament (Riksdag) may influence or determine how an authority shall decide an individual case, nor how a rule of law is to be applied.

Thus, a prosecutor is completely independent and free to make his or her own decisions.

Nor is a prosecutor's head or the authority itself permitted to issue directives on how a matter is to be handled or what is to be decided.

In Sweden, the role of the prosecutor has been devised so that the prosecutor has a central and independent role throughout the investigation process and legal proceedings in court. The prosecutor's independence is especially important with regard to the leading of criminal investigations and the taking of judicial decisions. It is the prosecutor, not the authority where he or she is employed, who takes decisions regarding whether legal proceedings are to be taken. It is the prosecutor who participates in court proceedings. The role of prosecutor is thereby exerted by an identifiable person with a personal responsibility.

A prosecutor has the right to decide whether a suspect is to be detained. The detaining of a person must be reported to a court within three days in order for the detention to be examined.

Thus a Swedish Prosecutor is not exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue a European arrest warrant. This means that the European Court of Justice's judgments of 27 May 2019 in the cases C-508/18, 509/18 and C-82/19 does not affect the Swedish prosecutor's competence to issue European Arrest Warrant.

Temporary Deputy Prosecutor-General Marie-Louise Ollén 2019-05-29

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The basis for the European arrest warrant is a court decision on detention.

In Sweden, a European arrest warrant for prosecution for a crime is not issued until after a detention order has been decided by a court. In order to do that, the court must have assessed that the person is suspected of the crime upon probable cause (*sannolika skäl*).

Once the detention hearing has been held and the detention order has been decided by the court, the prosecutor can issue a European arrest warrant.

A detention order can be appealed without restriction on time at the request of the suspect or his/her legal representative. Thus, it is possible that a detention order can be examined at the same time as a surrender process is underway in the executing country.

The prosecutor has a duty to consider the principle of proportionality and to continually examine whether an issued European arrest warrant is needed. If the degree of suspicion regarding the suspect decreases, the prosecutor handling the case is obliged to cancel the detention and withdraw the European arrest warrant.

When it comes to the prosecutor's attention that the wanted person has been arrested and the grounds for detention still exist, the prosecutor must examine whether the issued European arrest warrant is still valid. If the European arrest warrant is to be withdrawn, the foreign executing authority must be informed immediately. After that, the wanted person must be released immediately (by the executing foreign authority).

Marie-Louise Ollén  
Temporary Deputy Prosecutor-General

