Form of order sought

The Commission claims that the Court should:

Declare that Bulgaria has failed to fulfil its obligations in accordance with Article 21 of Directive 2004/49/EC ([1]) as follows:

— by failing to ensure the independence of the specialised investigation unit from the infrastructure manager, Bulgaria failed to fulfil its obligations under Article 21(1) of Directive 2004/49/EC;

— by failing to ensure sufficient resources for the specialised investigation unit in order for it to carry out its functions independently, Bulgaria failed to fulfil its obligations under Article 21(2) of Directive 2004/49/EC;

— Order the Republic of Bulgaria to pay the costs of the proceedings.

Pleas in law and main arguments

1. Under Article 21 of Directive 2004/49/EC, Member States must ensure that investigations of accidents and incidents referred to in Article 19 are conducted by a permanent body, which is to comprise at least one investigator able to perform the function of investigator-in-charge in the event of an accident or incident. This body is to be independent in its organisation, legal structure and decision-making from any infrastructure manager, railway undertaking, charging body, allocation body and notified body, and from any party whose interests could conflict with the tasks entrusted to the investigating body. It is furthermore to be functionally independent from the safety authority and from any regulator of railways.

2. In its application, the Commission maintains that the specialised unit for investigation of accidents and incidents set up under the Ministry of Transport, is not independent from the infrastructure manager — the national company 'Zhelezoputna infrastruktura'. More specifically, the unit lacks decision-making autonomy. In that regard, the Republic of Bulgaria has failed to comply with the provisions of Article 21(1) of Directive 2004/49/EC.

3. In its application, the Commission also submits that the legislation of the Republic of Bulgaria does not ensure access to sufficient resources for the specialised unit to be able to carry out its functions independently, in accordance with Article 21(2) of Directive 2004/49/EC.

([1]) Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive)

OJ 2004, L 164, p. 44.

Reference for a preliminary ruling from the High Court (Ireland) made on 5 February 2019 — Minister for Justice and Equality v PI

(Case C-82/19)

(2019/C 122/15)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicant: Minister for Justice and Equality

Defendant: PI

Questions referred

1. Is the independence from the executive of a public prosecutor to be decided in accordance with his position under the relevant national legal system? If not what are the criteria according to which independence from the executive is to be decided?

2. Is a public prosecutor who, in accordance with national law, is subject to a possible direction or instruction either directly or indirectly from a Ministry of Justice, sufficiently independent of the executive to be considered a judicial authority within the meaning of Article 6(1) of the Framework Decision ([1])?

3. If so, must the public prosecutor also be functionally independent of the executive and what are the criteria according to which functional independence is to be decided?

4. If independent of the executive, is a public prosecutor who is confined to initiating and conducting investigations and assuring that such investigations are conducted objectively and lawfully, the issuing of indictments, executing judicial decisions and conducting the prosecution of criminal offences, and does not issue national warrants and may not perform judicial functions a 'judicial authority' for the purposes of Article 6(1) of the Framework Decision?

5. Is the Public Prosecutor in Zwickau a judicial authority within the meaning of Article 6(1) of the Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States?

([1]) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (OJ 2002, L 190, p. 1).