Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 19 October 2016 [1]

Case C-453/16 PPU

Openbaar Ministerie
v
Halil Ibrahim Özçelik

(Request for a preliminary ruling from the rechtbank Amsterdam (Court of First Instance, Amsterdam, Netherlands))

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Article 8(1)(c) — Meaning of 'arrest warrant or any other judicial decision' prior to the European arrest warrant)

1. With regard to the system introduced by Framework Decision 2002/584/JHA, [2] the Court of Justice has recently emphasised the essential requirement for any European arrest warrant and surrender procedures to be preceded by a national arrest warrant or similar enforceable judicial decision, as distinct from the EAW.

2. Is that requirement, inferred from Article 8(1)(c) of the Framework Decision, as interpreted by the Court of Justice, fulfilled where the national AW [3] has been adopted by the police of the issuing State and confirmed by the Public Prosecutor's Office of that country? This is, in essence, the question which the rechtbank Amsterdam (Court of First Instance, Amsterdam, Netherlands), as the authority executing the EAW, [4] raises with the Court of Justice in its request for a preliminary ruling.

1 — Original language: Spanish.

2 — Council Framework Decision 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 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2009 L 81, p. 24) ('Framework Decision').

3 — Arrest warrant.

4 — European arrest warrant.

I – **Legal framework**

A – *EU law*

1. EU Treaty

3. In accordance with Article 6 TEU:

‘1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights [“the Charter”] …, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms [signed in Rome on 4 November 1950 (“ECHR”)]. Such accession shall not affect the Union’s competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by [the ECHR] and as they result from the constitutional traditions common to the Member States, are to constitute general principles of the Union’s law.’

2. The Charter

4. Under Article 47, entitled ‘Right to an effective remedy and to a fair trial’:

‘Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

…’

3. Framework Decision

5. Recital 5 states:

‘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. …’

6. Under recital 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.’

7. As set out in recital 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) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.’

8. Under Article 1, entitled ‘Definition of the European arrest warrant and obligation to execute it’:

‘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 of the Treaty on European Union.’

9. Article 6, under the heading ‘Determination of the competent judicial authorities’, provides:

‘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.’

10. Under Article 8(1), concerning the content and form of the European arrest warrant:

‘1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

…

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

…’

11. As regards relation to other legal instruments, Article 31(1)(a) states:

‘1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

(a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

…’

B – *Hungarian legislation*

12. According to the information provided by the Hungarian Ministry of Justice to the referring court, on 14 July 2016, and to that furnished by the Government of that country, the Public Prosecutor’s Office is a body which is independent of the executive, the head of which is appointed by Parliament for a term of nine years.

13. Article 28(3) and (4) of the Hungarian Code of Criminal Procedure [5] gives the Public Prosecutor’s Office the task of ordering the competent authorities (including the police force) to open ‘investigations’, and of monitoring their compliance with the law. It may, however, conduct those investigations itself. [6] Specifically, it must ‘monitor the legality of the enforcement of coercive measures ordered during criminal proceedings which involve the restricting or removal of personal freedom’. [7]

14. In that context, it is within the Public Prosecutor’s powers to confirm, amend or reject a ‘custody’ measure adopted by the police. Article 28(4)(c) of the Code of Criminal Procedure allows him ‘to amend or revoke the decision of the investigating authority’.

15. Article 126 of the Code Criminal Procedure envisages the possibility that a person may be taken into ‘custody’, that is, provisionally deprived of his liberty, if there are reasonable grounds for suspecting that he has committed an offence punishable by imprisonment and reason to believe that an order will be made for his ‘preliminary arrest’. ‘Custody’ may be ordered by a court, by the Public Prosecutor or by the investigating authority, and its duration may not exceed 72 hours, at the end of which the person must be freed, unless the court orders his ‘preliminary arrest’.

16. Under Article 129 et seq. of the Code of Criminal Procedure, the courts have exclusive jurisdiction to order the ‘preliminary arrest’ (which means ‘legal deprivation of liberty of the person held, prior to the announcement of the final decision’), [8] which may be decided before or after the charge has been formulated by the Public Prosecutor.

II – **The main proceedings and the questions referred for a preliminary ruling**

17. In the criminal proceedings brought against Mr Halil Ibrahim Özçelik, of Turkish nationality, the Veszprémi Járásbíróság (District Court, Veszprém, Hungary) issued an EAW on 21 June 2016 requesting his surrender for two offences committed in Hungary punishable by law in that Member State. [9]

18. Mr Özcelik is currently at the Detention Centre in Zwaag (Netherlands) pending the judgment of the rechtbank Amsterdam (Court of First Instance, Amsterdam).

5 — Büntetőeljárásról szóló 1998 évi XIX. törvény (Law XIX of 1998 establishing the ‘Code of Criminal Procedure’).

6 — According to Article 28(3) of the Code, the Public Prosecutor will order or conduct an investigation to establish the circumstances of the charge. Under Article 28(4), whenever the investigating authority, on its own initiative, conducts the investigation or carries out certain actions in connection with it, the Public Prosecutor shall monitor compliance with the Law throughout the proceedings and ensure that the persons involved are able to exercise their rights.

7 — Article 28(6) of the Code of Criminal Procedure.

8 — Article 129(1).

9 — According to the information given in the form attached to the EAW, he is charged with complicity in forgery of a public document (specifically, inclusion of false data, facts or declarations in a notarial document), covered by Article 342(1)(c) of the Hungarian Criminal Code.

19. In paragraph 1 of part (b) of the form attached to the EAW from the Veszprémi Járásbíróság (District Court, Veszprém), the basis of the EAW is stated as (national) Arrest Warrant No 19060/93/2014.bü, of the Police Department of Ajka (Hungary), confirmed by decision of 14 June 2016 of the Public Prosecutor's Office of Ajka.

20. On 8 July 2016, the rechtbank Amsterdam (Court of First Instance, Amsterdam) asked the Hungarian authorities for clarification concerning the role of the Public Prosecutor's Office, in particular, regarding its independence of the executive, the validation of warrants issued by the police and the criteria followed for that purpose, and also concerning the effects of that validation. It also asks whether a person who has confirmed a warrant issued by the police may subsequently act in the same case, as a representative of the Public Prosecution service.

21. In their reply of 14 July 2016, the Hungarian authorities stressed that the Public Prosecutor's Office is independent of the executive; its task is to ensure that the police respect the rights of the detainee; it has the power to amend or annul a decision taken by the police, as the authority responsible for criminal investigations, including arrest warrants, if it considers that they are contrary to the law or to the aim of the investigation; and it is possible that the member of the Public Prosecutor's Office who has validated a national AW may subsequently act as a representative of that authority in the criminal proceedings.

22. In the light of that information, the rechtbank Amsterdam (Court of First Instance, Amsterdam) has doubts as to whether a national AW issued by the police and subsequently confirmed by a member of the Hungarian Public Prosecutor's Office may be classified as a 'judicial decision' within the meaning of Article 8(1)(c) of the Framework Decision. It has therefore stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the expression "judicial decision", within the meaning of Article 8(1)(c) of Framework Decision 2002/584/JHA, a term of EU law which must be given an autonomous and uniform interpretation?

(2) If so, what is the meaning of that term?

(3) Does the confirmation, as in the present case, by a member of the Public Prosecutor's Office of a national arrest warrant previously issued by the police constitute such a "judicial decision"?'

23. In the opinion of the national court (expressed in the successive sections of paragraph 4.3 of the order for reference):

— Although Article 8(1)(c) of the Framework Decision makes no express reference to the law of the Member States for the purpose of determining the meaning and scope of that expression, it is not clear that it is a term which must be given an autonomous and uniform interpretation throughout the Union.

— The German-language version of Article 8(1)(c) of the Framework Decision refers to 'justizielle Entscheidung' and the English-language version to 'judicial decision'. They are therefore broader in scope than 'rechterlijke beslissing', which may mean that 'judicial decision' also applies to a decision of the Public Prosecutor's Office. However, one or more language versions of the same provision of EU law cannot serve as the sole basis for its interpretation.

— Paragraphs 52 to 57 of the judgment of the Court of Justice in *Bob-Dogi*[10] may be taken to mean that they 'do not assume any substantive requirements in relation to the powers and position of that authority, but give expression to the principle that it follows from the reference to a national arrest warrant that, in issuing that warrant, the protection of the procedural safeguards and the fundamental rights of the requested person was ensured'.

— Given the fact that in the national legal systems of a number of Member States, including the Netherlands, the public prosecutor participates in the criminal justice system and is authorised to order the arrest of suspects and, depending on the circumstances, to extend detention, the reading of paragraphs 52 to 57 of the judgment in *Bob-Dogi*[11] 'could result in an interpretation of the term 'judicial decision' on the basis of which it might also have to be taken to refer to a decision of a court or of a public prosecutor'.

— The interpretation of the terms 'judicial decision', within the meaning of Article 1(1) of the Framework Decision, and 'judicial authority', within the meaning of Article 6 of that Decision, is not clear, so the rechtbank Amsterdam (Court of First Instance, Amsterdam) doubts whether it can have recourse to them, to the term 'court or tribunal' in Article 267 TFEU, or to the case-law of the European Court of Human Rights relating to Article 5 ECHR.

III – **The proceedings before the Court of Justice**

24. The reference was received at the Court of Justice on 16 August 2016, with the request that it be dealt with under the urgent preliminary ruling procedure (fourth paragraph of Article 267 TFEU). The referring gave as a reason for its request the fact that Mr Özçelik was incarcerated and whether he remained so depended on the outcome of the main proceedings.

25. At the administrative meeting on 1 September 2016, the Court of Justice decided to handle the matter under the urgent preliminary ruling procedure.

26. Written submissions were filed by the Hungarian and Netherlands Governments and by the European Commission.

27. On 5 October 2016, a hearing was held at which the interested parties concerned, in particular the Hungarian Government, were asked, pursuant to Article 23 of the Statute of the Court of Justice, to reply to the questions which had been put to them.

28. The representatives of the Netherlands, German and Hungarian Governments, and the Commission, presented their observations at that hearing.

IV – **Analysis**

A – *First and second questions referred*

29. In points 26 to 31 of the Opinion I am delivering at the same time in *Poltorak*[12] I explain the reasons which lead me to the conclusion that the terms 'judicial authority' and 'judicial decision', used in the Framework Decision are autonomous. So as not to make this document unnecessarily long by reproducing them, I simply refer to them.

10 — C-241/15, EU:C:2016:385.

11 — Judgment of 1 June 2016, C-241/15, EU:C:2016:385.

12 — Case C-452/16 PPU, pending before this Court.

30. In point 32 et seq. of that same Opinion I propose an interpretation of both terms, according to the criteria of interpretation habitually used by the Court of Justice, which focuses on the former (judicial authority), in view of the 'close link between the nature of a judicial decision and the capacity of the person issuing it as a judicial authority'. [13]

31. Since the doubts harboured by the national court relate to the autonomy of the term 'judicial decision' contained in the Framework Decision and to its meaning, I consider that my views in that regard are adequately stated in the parallel opinion in *Poltorak*.

B – *Third question referred*

32. However, unlike the request for a preliminary ruling in *Poltorak*, in this request the questions of the national court do not concern the authority competent to issue an EAW but the authority competent to issue the national AW which proceeds it.

33. The doubts harboured by the Netherlands executing court arise in light of the fact that the Hungarian authority which, in this case, adopted the national AW against Mr Özcelik was the Police Department of Ajka, whose decision was confirmed or validated by the Hungarian Public Prosecutor's Office on 14 June 2016.

34. It should be pointed out, at the outset, that, unlike the domestic AW, the EAW against Mr Özcelik was granted on 21 June 2016 by a Hungarian court (the Veszprémi Járásbíróság (District Court Veszprém)), which nobody denies or disputes is a 'judicial authority' within the meaning of the Framework Decision. In my view, this fact may have significant implications, to which I shall refer later, for the reply to be given to the request for a preliminary ruling.

35. I shall start from the premiss that validation or confirmation by the Public Prosecutor's Office of the domestic AW, up to that moment signed only by the police, makes the Office the true decider (or, if you like, co-decider) of that warrant. The Public Prosecutor's Office, in the exercise of its powers in relation to criminal procedure, has taken over the preceding police decision, giving it the same force as any other decision it adopts. It may therefore be considered that the Hungarian Public Prosecutor's Office, in the criminal proceedings against Mr Özçelik, is the true 'author' of the domestic AW.

36. Acceptance of this premiss has at least two consequences. The first is that it will not be necessary in the context of this request to decide on the legal capacity, in the abstract, of the Public Prosecutor's Offices of the Member States (if any one of the Member States has mentioned them in the list of judicial authorities which it has to send to the Council, pursuant to Article 6(3) of the Framework Decision) to issue EAWs, within the meaning of Article 1 and Article 6(1) of that Framework Decision. I stress that, in the main proceedings, it was a district court, not the Public Prosecutor's Office, which sent the EAW to the rechtbank Amsterdam (Court of First Instance, Amsterdam).

37. The second consequence of that premiss is that the questions are limited to ascertaining only whether the domestic AWs granted (*rectius*, confirmed or ratified) by the Hungarian Public Prosecutor's Office correspond to any of the legal categories used in Article 8(1)(c) of the Framework Decision, namely, 'an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect …'.

13 — Point 34 of the opinion in *Poltorak*, C-452/16 PPU.

38. However, by reason of the close link — to which I have referred above — between the nature of a judicial decision and the capacity of the person issuing it as a judicial authority, the reply to these questions requires some preliminary observations concerning the possible classification of the Public Prosecutor's Office as a judicial authority in the Framework Decision. From its configuration, in the light of this legislative act, it will be possible to infer features which, once they have been contrasted with the status and role of the Public Prosecutor's Office in Hungarian criminal procedure, will permit conclusions as to whether the domestic AW endorsed by the Hungarian Public Prosecutor is a 'judicial decision' and whether it is suitable for inclusion in Article 8(1)(c) of the Framework Decision.

39. Article 3 of the initial proposal for a Framework Decision [14] contained a definition of 'judicial authority' (issuer or recipient of the EAW) which expressly included in both cases the Public Prosecutor's Office and the judges. [15]

40. The explanatory memorandum of that proposal added that the term 'judicial authority' corresponded to that of the European Extradition Convention of 1957 which, in turn, recognised as such the 'judicial authorities as such and the prosecution services, but not … the authorities of police force'. [16]

41. However, the Framework Decision did not follow the line given by Article 3 of the proposal and, in Articles 1 and 6 of the text which was finally approved, the reference to the Public Prosecutor's Office disappeared. It is not easy to see the meaning of that disappearance: was the intention to remove the Public Prosecutor's Office or was it assumed that, without any specific allusion, it formed part of the judicial authorities of the Member States, for the purposes of the EAW? [17]

42. Uncertainty surrounding this question has persisted until now, [18] without — unless I am mistaken — any judicial body of the Member States raising it before the Court of Justice. There remain several problems of interpretation before it can be resolved.

43. Following the adoption of the Framework Decision, some of the Member States informed the General Secretariat of the Council, pursuant to Article 6(3) thereof, that 'the competent judicial authorit[ies] under [their] law' to issue or execute EAWs included their respective Public Prosecutor's Offices. These communications, however, neither prejudge nor constitute a preconcondition, in strictly

14 — COM(2001) 522 final.

15 — 'For the purposes of this Framework Decision, the following definitions shall apply: (a) "*European arrest warrant*" means a request, issued by a judicial authority of a Member State, and addressed to any other Member State, for assistance in searching, arresting, detaining and obtaining the surrender of a person, who has been subject to a judgment or a judicial decision, as provided for in Article 2; (b) "*issuing judicial authority*" means the judge or the public prosecutor of a Member State, who has issued a European arrest warrant ; (c) "*executing judicial authority*" means the judge or the public prosecutor of a Member State in whose territory the requested person sojourns, who decides upon the execution of a European arrest warrant …'

16 — The commentary to Article 3 of the proposal states: 'The procedure of the European arrest warrant is based on the principle of mutual recognition of court judgments. State-to-State relations are therefore substantially replaced by court-to-court relations between judicial authorities. *The term "judicial authority" corresponds, as in the 1957 Convention (cf. Explanatory Report, Article 1), to the judicial authorities as such and the prosecution services, but not to the authorities of police force*. The issuing judicial authority will be the judicial authority which has authority to issue the European arrest warrant in the procedural system of the Member State (Article 4)'. Emphasis added.

17 — There are strong arguments in favour of both positions. An excellent selection of them may be found in the concurring and dissenting opinions formulated in the judgment of 30 May 2012 of the Supreme Court of the United Kingdom in *Assange* v *The Swedish Prosecution Authority*, [2012] UKSC 22. On the other hand, I have no doubt that the silence regarding the express removal of the police authorities, provided for in the Proposal, is to be interpreted as confirmation.

18 — The European Parliament adopted a Resolution, on 27 February 2014, with recommendations to the Commission on the review of the EAW (Procedure 2013/2019(INL), in which it criticised 'the lack of a definition of the term "judicial authority" in Framework Decision 2002/584/JHA and other mutual recognition instruments which has led to a variation in practice between Member States, causing uncertainty, harm to mutual trust, and litigation'. The European Parliament requested the Commission to submit 'legislative proposals following the detailed recommendations set out in the Annex hereto and providing for … a) a procedure whereby a mutual recognition measure can, if necessary, be validated in the issuing Member State by a judge, court, investigating magistrate or *public prosecutor*, in order to overcome the differing interpretations of the term "judicial authority" …'. Emphasis added.

legal terms, for the adjustment of the action of each Member State to the content of the Framework Decision. The provision authorises the Member States to designate or select, from among their judicial authorities, those which will be competent to receive or issue EAWs, but does not permit them to widen the concept of judicial authority by extending it to bodies which do not enjoy that status.

44. However, Hungary was not one of the Member States which accorded its Public Prosecutor's Office the position of appropriate judicial authority for issuing or receiving EAWs. According to the notification sent to the Council by that country on 26 April 2004, relating to Article 6(3) of the Framework Decision, '… for the purposes of conducting a criminal prosecution, the issuing judicial authority is the court with competence and jurisdiction in the matter. For the purposes of executing a custodial sentence or a detention order, the issuing judicial authority is the criminal court with competence and jurisdiction in the matter'. [19]

45. Although it would be tempting to try to give at this point a general reply to the doubt concerning the capacity of the Public Prosecutor's Offices of the Member States to issue EAWs, I do not think that this request for a preliminary ruling is the appropriate occasion, since — as I have already pointed out — the EAW was sent to the rechtbank Amsterdam (Court of First Instance, Amsterdam) by a Hungarian court, which was acting in accordance with the notification provided by the Republic of Hungary to the Council relating to Article 6(3) of the Framework Decision, and the Public Prosecutor's Office of that country is not permitted to do so.

46. We return, therefore, to the starting point, that is, the national decision prior to the EAW. In the general scheme of the Framework Decision, this national decision is definitely less important than the EAW itself. In fact, it appears only in Article 8, which governs the 'information' which the EAW must contain, included in the form in the annex. The Court of Justice has stressed, in the judgment of 1 June 2016, *Bob-Dogi*, [20] the obligation for a national AW to precede the EAW, but it is to the latter that the Framework Decision pays greater attention. The first is only a precursor, albeit essential, of the second.

47. As regards the regime applicable to criminal procedure at any of its stages (that is, both at the investigation and prosecution stages), the Court of Justice has stated that, '… criminal proceedings for enforcement of a custodial sentence or a detention order, or … substantive criminal proceedings … lie outside the scope of the Framework Decision and of EU law'. [21]

48. Logically, therefore, in order to distinguish that regime it is necessary to rely on the legislation of each Member State, always provided that the corresponding legal provisions relating to this matter respect the fundamental rights, as set out in the ECHR, including the right to liberty and an effective remedy established in Articles 5 and 13 of that Convention and Articles 6 and 47 of the Charter.

19 — Council of the European Union, note 8929/04.

20 — C-241/15, EU:C:2016:385.

21 — Judgment of 30 May 2013, *F* (C-168/13 PPU, EU:C:2013:358, paragraph 48).

49. The participation of the Public Prosecutor's Office in the investigation and, possibly, in the criminal proceedings is at the discretion of the legal order of each Member State. EU law accepts this principle and, indeed, in another of the most significant areas of judicial cooperation in criminal matters to which Article 82 TFEU refers, Article 2 of Directive 2014/41/EU[22] has not hesitated expressly to include the Public Prosecutor's Office among the authorities which may issue a European investigation order.[23]

50. Acceptance of the Public Prosecutor's Office as an authority which may adopt a 'judicial decision' in order to have one or more specific investigative measures carried out in another State ('executing State'), in order to obtain evidence, shows, if it were necessary, the perception of the EU legislature of the significant role of the Public Prosecutor's Office in criminal procedures. It must not be forgotten that the European Investigation Order is one more instrument, adopted within the framework of the principle of mutual recognition of documents and judicial decisions, which has been generally known as the cornerstone of judicial cooperation in criminal matters in the Union, since the European Council of Tampere on 15 and 16 October 1999.

51. It is true that it is not possible simply to equate the action of the Public Prosecutor's Office in one area (that relating to freedom, which is affected by the arrest of the persons concerned) and in another (the collection of evidence). What I mean is that its acceptance as a judicial authority in Directive 2014/41/EU, for investigation orders, does not necessarily indicate that it has to be extended also to the Framework Decision, for EAWs. This legislative point, however, constitutes serious support for the argument in favour of a broad interpretation, permitting consideration of the Public Prosecutor's Office as such, of the term 'judicial authority' in the procedure for cooperation in criminal matters (including that of the EAW) to which Article 82 TFEU refers.

52. What I intend with this line of argument is to highlight a distinctive feature of the Public Prosecutor's Office, namely, its capacity — if this is provided for in the constitutional or legal rules of each Member State — to participate in the administration of justice, as an instrument of the State which institutes criminal proceedings and, within which, it may even adopt, at least provisionally, and for limited periods of time, custody and arrest warrants or similar decisions, before the arrested persons are passed to the court which has to decide whether they are to be released or imprisoned.

53. Along the same lines, the Court of Justice has emphasised the role of the Public Prosecutor's Office in criminal proceedings, coming to describe it (in relation to one of its decisions in the proceedings) as 'an authority responsible for administering criminal justice in the national legal system concerned'.[24]

54. For its part, the European Court of Human Rights has acknowledged that a member of the Public Prosecutor's Office may be considered to be '[a judge or other] officer authorised by law to exercise judicial power', before whom, according to Article 5(3) ECHR, everyone arrested or detained in accordance with the provisions of Article 5(1)(c) are to be brought.

22 — Directive of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1). Under Article 36 thereof, the Member States must take the necessary measures to comply with the Directive by 22 May 2017.

23 — The European Investigation Order in criminal matters (EIO) is, according to Article 1 of Directive 2014/41, '… a judicial decision which has been issued or validated by *a judicial authority of a Member State* ("the issuing State") to have one or several specific investigative measure(s) carried out in another Member State ("the executing State") to obtain evidence in accordance with this Directive'. Article 2(c)(i) of the same legislative text provides that, 'For the purposes of this Directive … "issuing authority" means … a judge, a court, an investigating judge or *a public prosecutor competent in the case concerned* …' (emphasis added).

24 — Judgment of 29 June 2016, *Kossowski* (C-486/14, EU:C:2016:483, paragraph 39). In that case, the District Public Prosecutor's Office, Kołobrzeg (Poland) had ordered the termination of the criminal proceedings, and the request for a preliminary ruling from the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Civil and Criminal Court, Hamburg, Germany), concerned the interpretation of Articles 54 and 55 of the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, which was signed in Schengen (Luxembourg) on 19 June 1990 and entered into force on 26 March 1995, and of Article 50 and Article 52(1) of the Charter. In the same vein, the classification of the Public Prosecutor's Office as 'an authority required to play a part in the administration of criminal justice in the national legal system concerned' appeared in the judgment of 11 February 2003, *Gözütok and Brügge* (C-187/01 and C-385/01, EU:C:2003:87, paragraph 28).

55. In a series of judgments, beginning with *Schiesser v. Switzerland*[25] and including the judgment of the Grand Chamber in *Medvedyev and Others v. France*,[26] the European Court of Human Rights has interpreted the expressions 'competent judicial authority' and 'judge or other officer authorised by law to exercise judicial power' (both contained in Article 5 ECHR, dedicated to the right to liberty and security) in terms which permit them to cover the members of the Public Prosecutor's Office, if they provide the safeguards inherent to those concepts (a matter to which I shall return).

56. Finally, with regard to national law, it should be pointed out that, in the Republic of Hungary, Public Prosecutors may order the arrest (in the form of 'custody') of a person in the circumstances provided for in its Code of Criminal Procedure to which I have referred above.[27] They can also confirm or revoke the similar order previously issued by the police. In both cases the crucial point is, in my view, that these deprivations of freedom decided, ratified or confirmed by the Public Prosecutor's Office are limited by law[28] to a short period of time, since the person in custody must be brought before the judge, or released, within a maximum period of 72 hours. The Public Prosecutor's Office is the only authority competent to put the detainee under 'provisional arrest' before trial.

57. Under these legislative conditions, which I consider to be consistent with Article 5 ECHR, the Hungarian Public Prosecutor's Office acts as an authority which, being independent of the executive, participates in the administration of justice by instigating public criminal proceedings (that is, it seeks application of the *ius puniendi* of the State) from a position different from that of the court, and is authorised to decide provisional measures, of very short duration, which affect the freedom of persons, subject to the subsequent essential decision of the court.

58. According to the Court of Justice's interpretation of Article 8(1)(c) of the Framework Decision, the three kinds of decision envisaged in that provision (namely, an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect) are included in the classification 'national judicial decision' distinct from the subsequent EAW.[29] Specifically, it has stated that, before the EAW is acted upon, a national judicial authority must have adopted a 'decision, such as a decision on which the European arrest warrant will be based'.[30]

59. It seems to me that this reading of Article 8(1)(c) of the Framework Decision in essence favours according national arrest warrants issued or endorsed by the Public Prosecutor's Office the status of 'judicial decision', within the meaning of that provision, which facilitates the subsequent issue, by the court, of the EAW.

60. In *Bob-Dogi*, furthermore, as well as considering the literal interpretation, the Court of Justice paid special attention to the fact that, without prior national AWs, 'procedural safeguards and fundamental rights, the protection of which it is the task of the judicial authority of the issuing Member State to ensure', might be undermined, since the person concerned would be deprived of the 'first level of protection' of those safeguards and rights, that is, the purely national level.[31]

61. I do not believe that there is any basis for that concern in this case, in light of the fact that the Hungarian Code of Criminal Procedure in any event guarantees the right of the detainee to be taken before a judge within 72 hours, if the national AW has come from the police authority and the Public Prosecutor's Office has ratified it. The procedural requirements of Article 5 ECHR, specifically monitoring by a court of the regularity of the arrest, are therefore satisfied.

25 — ECtHR, Case 7710/76, *Schiesser v. Switzerland*, CE:ECHR:1979:1204JUD000771076.

26 — ECtHR, Case 3394/03, *Medvedyev and Others v. France*, CE:ECHR:2010:0329JUD000339403.

27 — See points 15 and 16 of this Opinion.

28 — Article 126 of the Code of Criminal Procedure.

29 — Judgment of 1 June 2016, *Bob-Dogi* (C-241/15, EU:C:2016:385, paragraphs 46, 49, 51, 52, 56 and 57).

30 — Ibid., paragraph 57.

31 — Ibid., paragraph 55.

62. To consider the Public Prosecutor's Office a 'judicial authority' which, for the purposes of the Framework Decision, may order or confirm, under the strict conditions already mentioned, a temporary deprivation of freedom (that is, a national AW) does not mean to equate it to a judicial body authorised to have recourse to Article 267 TFEU.[32] Apart from the fact that not everything 'legal' has to be, strictly speaking, 'judicial', the bodies, which may or must refer questions for a preliminary ruling are those which have to settle the disputes brought before them, for which they require the assistance of the Court of Justice. The Public Prosecutor's Office is not one of those bodies, but it may nevertheless be accorded the status of 'judicial authority', in accordance with the Framework Decision, if the national legislation allows it to adopt national AWs. These, therefore, may be classified as arrest warrants or executive judicial decisions having the same force, for the purposes of Article 8(1)(c) of the Framework Decision.

63. Nor is recognition of the Public Prosecutor's Office as a 'judicial authority' with the power, as regards the Framework Decision, to adopt national AWs hampered by the fact that the individual member of that institution who has issued it (or ratified the one issued by the police) may be the same as the person who represents it later on in the criminal proceedings brought against the detainee. The warnings of the European Court of Human Rights in the judgments in *Schiesser v. Switzerland* and *Medvedyev and Others v. France*, to which I have referred above,[33] are explained in the context of Article 5(1)(c) ECHR,[34] that is, for situations in which the Public Prosecutor's Office offers an alternative to the court for deciding on whether the detainee shall remain in custody or be released. However, that is not the position in the present case since, as I have already analysed, according to the Hungarian Code of Criminal Procedure, people who are detained (on a police warrant, subsequently ratified by the Public Prosecutor's Office) are brought before a judge or released. There is no objection, at this stage, to the representative of the Public Prosecutor's Office continuing to participate in the subsequent stages of the proceedings.

64. As a closing argument I must go back to where I started: the Hungarian court which adopted the EAW in this case doubtless did so after examining and evaluating, according to its own criterion, the circumstances in which it could be acted upon, which included the prior existence of a national AW. Therefore, it must, logically, have considered the circumstances in which this had been produced, with the participation of the Public Prosecutor's Office, which involves monitoring its regularity and relevance. Although the Public Prosecutor's Office had ratified the police warrant, the Vezsprem District Court, in its turn, endorsed the action of the Public Prosecutor's Office, which, in the end, ensures that the procedure for issuing the EAW is afforded the proper guarantees, in particular, that of the first level of protection required by the case-law of the Court of Justice (judgment of 1 June 2016, *Bob-Dogi*).[35]

32 — The referring court cites, appropriately, the judgment of 12 December 1996, *X* (C-74/95 and C-129/95, EU:C:1996:491). The Court of Justice referred, in paragraph 19 of that judgment, to the Opinion of Advocate General Ruiz-Jarabo Colomer (points 6 to 9) in holding that '*…the role of the Procura della Repubblica in the main proceedings is not to rule on an issue in complete independence but, acting as prosecutor in the proceedings, to submit that issue, if appropriate, for consideration by the competent judicial body*'.

33 — See point 55 of this Opinion.

34 — The European Court of Human Rights interprets that provision, stating that 'The judicial officer must offer the requisite guarantees of independence from the executive and the parties, which precludes his subsequent intervention in criminal proceedings on behalf of the prosecuting authority, and he or she must have the power to order release, after hearing the individual and reviewing the lawfulness of, and justification for, the arrest and detention …' (ECtHR, judgment of 29 March 2010 in *Medvedyev and Others v. France*, CE:ECHR:2010:0329JUD000339403, paragraph 124).

35 — See point 60 of this Opinion.

V – **Conclusion**

65. In the light of the foregoing considerations, I propose that the Court of Justice reply to the questions referred by the rechtbank Amsterdam (Court of First Instance, Amsterdam, Netherlands) as follows:

(1) The expression 'judicial decision' which appears in Article 8(1)(c) 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, is an autonomous term of EU law and is to be interpreted uniformly throughout the European Union.

(2) A national arrest warrant, issued by a police authority and subsequently confirmed by the Public Prosecutor's Office in the circumstances of this case, may be classified as a 'judicial decision', within the meaning of Article 8(1)(c) of the aforementioned Framework Decision, in order to serve as a basis for a subsequent European arrest warrant.