

EU top court says German prosecutors can't issue European arrest warrants

According to the Court of Justice of the European Union, German public prosecutors are not independent when prosecuting cases. As a result, they will no longer be allowed to issue European arrest warrants, which could considerably increase the work of German courts.

By Florence Schulz

EURACTIV (29.05.2019) – <https://bit.ly/2QMgkV3> – A European arrest warrant may only be issued by a judicial authority that is deemed to be completely independent of the executive.

However, the Court of Justice of the European Union (CJEU) ruled on Monday (27 May) that this is not the case for German public prosecutors as they have to report to the Ministry of Justice before starting investigations.

Therefore, according to the judges in the Luxembourg-based court, it cannot be ruled out that instructions from the minister of justice could influence the work of investigators in some cases.

In other words, when investigations by the respective state governments fall flat, the Ministry of Justice could try to

prevent the public prosecutor's office from carrying out investigations. This could be the case in a potential affair where party donations are at play.

In most other EU member states, the public prosecutor's office is independent of the ministries of justice. An inglorious example is Poland, where the rule of law has been weakened by several judicial reforms, severely limiting judicial independence and putting Warsaw on a collision course with Brussels.

But the German system has also been criticised for some time. In 2009, a resolution passed by the Council of Europe's Parliamentary Assembly in response to a report drafted by the Committee on Legal Affairs and Human Rights called on Germany to strengthen the independence of its prosecutors and judges.

The consequence of the CJEU ruling is likely to be that only German courts will be allowed to issue European arrest warrants in the future. Currently, it's public prosecutors who are in charge of issuing European arrest warrants.

For the courts, this would mean a lot more work, even if the public prosecutor's offices did the preparatory work.

According to research conducted by the Legal Tribune Online, additional questions are in need of clarification, including which courts would be responsible for examining and issuing European arrest warrants, and whether existing arrest warrants need to be reissued.

According to the German Federal Police Office, there are currently around 5,600 European arrest warrants, the Legal Tribune Online reported.

The international NGO Transparency International has long been pressing for the reform of the German justice system.

The CJEU ruling now gives another urgent reason for such a reform, according to Reiner Hüper, director of the working group for criminal law.

“The possibility of the executive branch exerting this influence damages the national and international reputation of the German criminal justice system and undermines confidence in the rule of law,” he told EURACTIV.