

Case C-897/19 PPU

Request for a preliminary ruling

Date lodged:

5 December 2019

Referring court:

Vrhovni sud (Croatia)

Date of the decision to refer:

28 November 2019

Appellant:

I.N.

The Vrhovni sud (Supreme Court, Croatia) ... makes the present

REQUEST FOR A PRELIMINARY RULING

WITH A REQUEST FOR THE MATTER TO BE DEALT WITH UNDER

THE URGENT PRELIMINARY RULING PROCEDURE

(anonymised version)

I. Information relating to the referring court:

Referring court: Vrhovni sud (Supreme Court) of the Republic of Croatia ...

II. Parties to the main proceedings:

I.N., ...

The Russian Federation, represented by the Public Prosecutor's Office of the Republic of Croatia ...

III. Presentation of the main proceedings and the relevant facts

(a) The international wanted persons notice and the circumstances of the arrest of the person concerned by the extradition request, I.N.

- 1 On 20 May 2015, Interpol's Bureau in Moscow (Russian Federation) issued an international wanted persons notice for I.N. for 'arrest' on account of criminal proceedings for passive corruption (Article 290(5) of the Criminal Code of the Russian Federation). According to the summary of the factual description of the criminal offence, the foreign national I.N. is suspected of having received, in his capacity as director of the Division for Licences and Certificates of the Russian Ministry of Emergency Situations in the Republic of Karelia, after prior agreement with other officials of the Ministry and in abuse of his official functions, a kickback amounting to RUB 833 000 from a representative of an undertaking, and of having in return issued licences to that person [OR. 2] relating to the assembly, technical support and repair of fire-prevention equipment in buildings and construction sites.
- 2 On 30 June 2019, at the border crossing point M., the foreign national I.N. was arrested on the basis of the aforementioned international wanted persons notice (Red Notice issued by Interpol's Bureau in Moscow). The foreign national I.N. presented himself, as a bus passenger, for border control with a view to entering the Republic of Croatia from the Republic of Slovenia. At the border control, he established his identity by presenting an Icelandic travel document for refugees No ..., valid from 25 February 2019 to 25 February 2021.
- 3 With the arrest of the foreign national I.N., a decision-making process with respect to the extradition of the foreign national I.N. to the Russian Federation started, which is conducted in the Republic of Croatia in accordance with the provisions of the Zakon o međunarodnoj pravnoj pomoći u kaznenim stvarima (Law on international mutual legal assistance in criminal matters, 'Narodne novine' 178/04; 'the ZOMPO'). The relevant provisions of the ZOMPO are referred to in Section IV of the present request.

(b) The decision-making process with respect to the request for extradition of the foreign national I.N. to the Russian Federation

- 4 On 1 July 2019, I.N. was examined by an investigating judge of the Županijski sud (County Court, Croatia) of Zagreb. I.N. objected to being extradited to the Russian Federation. At the hearing, he stated that he has Russian and Icelandic nationality.
- 5 On 1 August 2019, the Administration for consular affairs, visa services and foreign nationals at the Ministry of Foreign and European Affairs of the Republic of Croatia forwarded to the Županijski sud (County Court) of Zagreb a note from the Embassy of Iceland to B., in which it is stated that the foreign national I.N. has Icelandic nationality and permanent residence in Iceland. The note states that the

foreign national I.N. acquired Icelandic nationality on 19 June 2019. Before acquiring that nationality, he held a travel document for refugees No The note also states that the Icelandic Government asks that the foreign national I.N. be guaranteed safe passage to Iceland with a minimum of delay.

- 6 On 6 August 2019, the Županijski sud (County Court) of Zagreb received a request from the Public Prosecutor's Office of the Russian Federation seeking the extradition of the foreign national I.N. to the Russian Federation, in accordance with the provisions of the European Convention on Extradition. The extradition is requested on account of criminal proceedings for nine offences of passive corruption, referred to in Article 290(3) of the Criminal Code of the Russian Federation, and five offences of passive corruption, referred to in Article 290(5)(a) of the Criminal Code of the Russian Federation. Documents were also submitted in support of the extradition request, in accordance with the provisions of the European Convention on Extradition. It is also mentioned in the request that the Public Prosecutor's Office of the Russian Federation guarantees that the purpose of the extradition request is not to prosecute the person concerned for political reasons, on account of his race, religion, nationality or opinions, that the foreign national I.N. would be given every opportunity to exercise his right of defence, including with the assistance of a lawyer, and that he would not be subjected to torture, cruel or inhuman treatment, or punishment that undermines human dignity.
- 7 On 5 September 2019, the chamber of the Županijski sud (County Court) of Zagreb hearing the case adopted an order by which it held that the legal conditions for the extradition of the foreign national I.N. for the purpose of criminal proceedings, laid down in Articles 33 and 34 of the ZOMPO, were met, in accordance with the principle of speciality set out in Article 37 of the ZOMPO. **[Or.3]**
- 8 On 30 September 2019, the foreign national I.N. lodged an appeal against the order issued on 5 September 2019 by the Županijski sud (County Court) of Zagreb. I.N. considers that there is a concrete, serious and reasonably foreseeable risk that, if he were to be extradited, he would be subjected to torture and inhuman and degrading treatment. In the appeal, he stated that his status as refugee had been recognised in Iceland precisely on account of the specific criminal proceedings in Russia, that he held a valid Icelandic travel document for refugees, and that, by the order under appeal, the Županijski sud (County Court) of Zagreb had de facto put an end to the international protection granted to him in Iceland. He also stated that he had Icelandic nationality and that, by adopting the order under appeal, the court of first instance had misconstrued the interpretation of the Court in its judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630). In support of his claims regarding the risk of torture and inhuman or degrading treatment, he produced judgments of the European Court of Human Rights making reference to the inhuman conditions of the prison system of the Russian Federation and to the corrupt judicial system, as well as a report of the Commissioner for Human Rights N.M. of 12 November 2013.

- 9 The Vrhovni sud (Supreme Court) of the Republic of Croatia, as court of second instance, must give a ruling on the appeal lodged by the foreign national against the order made on 5 September 2019 by the Županijski sud (County Court) of Zagreb.
- 10 According to the settled case-law of the Vrhovni sud (Supreme Court) of the Republic of Croatia, an extradition request must be dismissed where there is a real risk that, were the person concerned to be extradited, he or she would be subjected to torture or inhuman punishment or treatment. Those aspects will be examined in the appeal proceedings.
- 11 Nevertheless, the Vrhovni sud (Supreme Court) of the Republic of Croatia has doubts as to whether, prior to the adoption of a decision on the extradition request on the basis of the provisions of EU law, the Republic of Iceland, which granted nationality to the foreign national concerned, must be informed of the extradition request, so that that State can, if it so wishes, request the surrender of its national in order to conduct proceedings aimed at preventing the risk of impunity.
- 12 Given that there are doubts as to the application of EU law, the Vrhovni sud (Supreme Court) of the Republic of Croatia decided, by order of 26 November 2019, to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

Must Article 18 TFEU be interpreted as meaning that a Member State of the European Union which gives a ruling on the extradition to a third State of a national of a State that is not a Member State of the European Union but is a Member State of the Schengen area is required to inform that Member State of the Schengen area which granted nationality to that person of the extradition request?

If the answer to the preceding question is in the affirmative and the Member State of the Schengen area has requested the surrender of that person in order to conduct the proceedings in respect of which extradition is requested, must that person be surrendered to that State, in accordance with the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway?

(c) The decision-making process with respect to detention pending extradition

[Or. 4]

- 13 On 1 July 2019, after the foreign national I.N. was arrested on the basis of the international wanted persons notice, the examining judge of the Županijski sud (County Court) of Zagreb ordered that I.N. be detained pending extradition, in accordance with Article 47 of the ZOMPO. The foreign national I.N. lodged an appeal against that order; the chamber of the Županijski sud (County Court) of Zagreb hearing the appeal dismissed it, on 18 July 2019, as unfounded.

- 14 On 7 August 2019, after receiving the request for extradition to the Russian Federation, the examining judge of the Županijski sud (County Court) of Zagreb extended the detention pending extradition of the foreign national I.N. The appeal lodged by the foreign national I.N. was dismissed by order of the chamber of the Županijski sud (County Court) of Zagreb hearing the case on 27 August 2019, and consequently, the order of the examining judge became final.
- 15 The foreign national I.N. is still held in detention pending extradition.

IV. National provisions which may apply to the present case:

- 16 *Constitution of the Republic of Croatia* ('Narodne novine' No 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14)

Article 9

A national of the Republic of Croatia may not be forcibly expelled from the Republic of Croatia, deprived of his or her nationality, or extradited to another State, except in implementation of a decision on extradition or surrender made in accordance with an international treaty or the *acquis communautaire*.'

- 17 The Republic of Croatia has not concluded a bilateral agreement with the Russian Federation, on the basis of which it would be obliged to extradite its nationals to that State.

- 18 *ZOMPO*

Article 1

(1) The present law shall govern international legal assistance in criminal matters ("international legal assistance"), subject to the provisions of any international treaty to the contrary.

(2) ...

Order dismissing the extradition request

Article 55

(1) Where the competent court rules that the legal conditions for extradition are not met, it shall adopt an order dismissing the extradition request and forward that order without delay to the Vrhovni sud (Supreme Court) of the Republic of Croatia, which, after hearing the competent Public Prosecutor, shall confirm, set aside or amend the order.

(2) The final order dismissing the extradition request shall be sent to Ministry of Justice, which will notify the requesting State.

[Or. 5]

Order authorising extradition

Article 56

(1) Where the chamber of the competent court hearing the case rules that the legal conditions for extradition are met, it shall do so by way of an order.

(2) That order may be appealed within 3 days. The Vrhovni sud (Supreme Court) of the Republic of Croatia shall give a ruling on the appeal.’

- 19 The grounds for dismissing the request are governed by Articles 12 and 13 of the ZOMPO; the particular grounds for refusing extradition are set out in Article 35 of the ZOMPO.

‘Dismissal of the request

Article 12

(1) The competent national authority may reject the request for international legal assistance if:

1. the request concerns an act considered to be a political offence or an act linked to such an offence;
2. the request concerns a tax offence;
3. acceptance of the request could undermine the sovereignty, security, legal order or other vital interests of the Republic of Croatia;
4. it can be reasonably assumed that the person referred to in the request for extradition would face, were he or she to be extradited, prosecution or punishment on account of his or her race, religion, nationality, membership of a particular social group, or political opinion, or that his or her situation would be made more difficult on one of those grounds;
5. the offence in question is a minor offence.’

- 20 The case-law of the Vrhovni sud (Supreme Court) of the Republic of Croatia concerning the application of the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630)

By order ... of 4 January 2018, the Vrhovni sud (Supreme Court) of the Republic of Croatia set aside the order made by the lower court, by which the latter held that the legal conditions for the extradition of the Russian national to the Russian Federation had been met. By that order, the Vrhovni sud (Supreme Court) of the Republic of Croatia called on the lower court to examine whether the person referred to in the extradition request was not also a national of the Republic of

Lithuania, to which the information in the file makes reference, and it referred the court of first instance to the interpretation of the Court of Justice of the European Union in *Petruhhin*.

V. The provisions of EU law in respect of which an interpretation is sought:

21 Treaty on the Functioning of the European Union

Article 18

Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

...'

[Or. 6]

22 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

Article 2

Internal borders may be crossed at any point without any checks on persons being carried out.'

23 Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union

Article 2

The Schengen *acquis* shall apply to the Member States referred to in Article 1, without prejudice to Article 3 of the Act of Accession of 16 April 2003 or to Article 4 of the Act of Accession of 25 April 2005. The Council will substitute itself for the Executive Committee established by the Schengen agreements.'

24 Agreement concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*

Article 1

The Republic of Iceland and the Kingdom of Norway hereinafter referred to as "Iceland" and "Norway" respectively shall be associated with the activities of the European Community and the European Union in the fields covered by the

provisions referred to in Annexes A and B to this Agreement and their further development.

This Agreement creates reciprocal rights and obligations in accordance with the procedures set out herein.’

- 25 Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

‘Article 1

Object and purpose

1. The Contracting Parties undertake to improve, in accordance with the provisions of this Agreement, the surrender for the purpose of prosecution or execution of sentence between, on the one hand, the Member States and, on the other hand, the Kingdom of Norway and the Republic of Iceland, by taking account of, as minimum standards, the terms of the Convention of 27 September 1996 relating to extradition between the Member States of the European Union.

2. The Contracting Parties undertake, in accordance with the provisions of this Agreement, to ensure that the extradition system between, on the one hand, the Member States and, on the other hand, the Kingdom of Norway and the Republic of Iceland shall be based on a mechanism of surrender pursuant to an arrest warrant in accordance with the terms of this Agreement.

3. This Agreement shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in the European Convention on Human Rights, or, in case [Or. 7] of execution by the judicial authority of a Member State, of the principles referred to in Article 6 of the Treaty on European Union.

4. Nothing in this Agreement should be interpreted as prohibiting refusal to surrender a person in respect of whom an arrest warrant as defined by this Agreement has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.’

VI. The grounds for making a request for a preliminary ruling:

- 26 The Vrhovni sud (Supreme Court) of the Republic of Croatia considers that the foreign national I.N. no longer has the status of refugee, because he has acquired Icelandic nationality in the meantime.

- 27 In the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), the Court held that Articles 18 and 21 TFEU must be interpreted as meaning that, when a Member State to which an EU citizen, a national of another Member State, has moved receives an extradition request from a third State with which the first Member State has concluded an extradition agreement, it must inform the Member State of which the citizen in question is a national and, should that Member State so request, surrender that citizen to it, in accordance with the provisions 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, provided that that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory.
- 28 In the reasoning in the judgment in *Petruhhin*, the Court stated that unequal treatment (which allows the extradition of an EU citizen who is a national of another Member State, such as Mr Petruhhin, since nationals benefit from protection) gives rise to a restriction of freedom of movement, within the meaning of Article 21 TFEU. Such a restriction can be justified where it is based on objective considerations and is proportionate to the legitimate objective of the national provisions. A restriction for the purpose of preventing the risk of impunity for persons who have committed a criminal offence constitutes a legitimate objective. The non-extradition of its own nationals is counterbalanced by the possibility for the Member State to prosecute such nationals for serious offences committed outside its territory (in the light of the maxim ‘aut dedere, aut judicare’ — either extradite or prosecute). Further, the Member States as a general rule have no jurisdiction to try cases concerning such acts where neither the perpetrator nor the victim is a national of that Member State. In that regard, the extradition of foreign nationals for the purpose of preventing the risk of impunity is a just cause for extradition. However, as regards the criterion of proportionality, in particular the existence of a less restrictive alternative measure for attaining the objective of preventing the risk of impunity for the perpetrators of a criminal offence, it is important, in the situation described, to give priority to the exchange of information with the Member State of which the person concerned is a national.
- [Or. 8]**
- 29 The foreign national I.N. is not an EU citizen but a national of the Republic of Iceland, with which the EU has a particular relationship.
- 30 The foreign national I.N., who has permanent residence in the Republic of Iceland, made use of freedom of movement within the Member States of the Schengen area.
- 31 The Schengen *acquis* applies to Member States of the European Union, as provided for in Article 2 of Protocol (No 19) TFEU on the Schengen *acquis* integrated into the framework of the European Union. Furthermore, the Council of the European Union concluded, with the Republic of Iceland and the Kingdom of

Norway, an agreement concerning the latter's association with the implementation, application and development of the Schengen *acquis*.

- 32 The foreign national I.N. was arrested on the territory of the Republic of Croatia, upon entering the Republic of Croatia from another Member State of the European Union, namely the Republic of Slovenia.
- 33 The Republic of Croatia does not extradite its nationals to the Russian Federation.
- 34 Article 18 TFEU provides that, within the scope of application of the Treaties, any discrimination on grounds of nationality is to be prohibited.
- 35 The Republic of Iceland is not a member of the European Union but, on 1 November 2019, the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway entered into force. That agreement provides that the contracting parties undertake to ensure that the extradition system between, on the one hand, the Member States and, on the other hand, the Kingdom of Norway and the Republic of Iceland is to be based on a mechanism of surrender pursuant to an arrest warrant, in accordance with the terms of that agreement.
- 36 Having regard to all the aforementioned aspects of the case, the Vrhovni sud (Supreme Court) of the Republic of Croatia has doubts as to whether Article 18 TFEU must be interpreted as meaning that a Member State of the European Union (in the present case, the Republic of Croatia) ruling on the extradition to a third State (in the present case, the Russian Federation) of a national of a State which is not a Member State of the European Union but is a Member State of the Schengen area, is required, prior to the decision on extradition, to inform the State of which the foreign national is a national (in the present case, the Republic of Iceland) of the extradition request, and whether, in the event that that Member State of the Schengen area (in the present case, the Republic of Iceland) seeks the surrender of that person for the purpose of conducting the proceedings in respect of which extradition is requested, that person must be surrendered to that Member State, in accordance with the Agreement between the European Union and the Republic of Iceland and Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway.
- 37 If the answer to the question referred should be in the affirmative, the referring court takes the view that informing the Republic of Iceland of the extradition request, for the purpose of the possible issue of an arrest warrant with a view to a surrender in order for criminal proceedings to be conducted, would contribute to the fulfilment of the objective of preventing the risk of impunity for the perpetrators of a criminal offence. If the answer to the question referred should be in the affirmative, but the Republic of Iceland does not request the surrender, the Vrhovni sud (Supreme Court) of the Republic of Croatia would examine whether the extradition infringes the rights enshrined in Article 19 of the Charter of

Fundamental Rights of the European Union. Nevertheless, if the answer to the question referred should be in the negative, namely if the Vrhovni sud (Supreme Court) of the Republic of Croatia is not required to inform the Republic of Iceland of the extradition as a matter of EU law, the Vrhovni sud (Supreme Court) of the Republic of Croatia would then examine, in accordance [Or. 9] with the provisions of national law, whether, as a result of the extradition, the foreign national would be subjected to torture or inhuman or degrading punishment or treatment. The fact that the foreign national I.N. previously acquired the status of refugee in Iceland is one of the criteria for assessing that risk.

VII. Urgent preliminary ruling procedure in accordance with Article 107 of the Rules of Procedure

- 38 The foreign national I.N. is held in detention pending extradition.
- 39 In accordance with Article 49 of the ZOMPO, the measure of detention pending extradition remains in force throughout the extradition procedure until the expiry of the deadline for the implementation of the extradition order.
- 40 The answer to the question referred is decisive as regards the assessment of the legal status of the foreign national concerned.
- 41 Given that deprivation of liberty constitutes a limitation of the fundamental human rights and liberties of the foreign national on whose extradition a ruling has been given in the main proceedings, it is requested that the request for preliminary ruling be dealt with under the urgent procedure set out in Article 107 of the Rules of Procedure.

VIII. Request for interpretation:

Must Article 18 TFEU be interpreted as meaning that a Member State of the European Union which gives a ruling on the extradition to a third State of a national of a State that is not a Member State of the European Union but is a Member State of the Schengen area is required to inform that Member State of the Schengen area which granted nationality to that person of the extradition request?

If the answer to the preceding question is in the affirmative and the Member State of the Schengen area has requested the surrender of that person in order to conduct the proceedings in respect of which extradition is requested, must that person be surrendered to that State, in accordance with the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway?

Zagreb, 28 November 2019

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WORKING DOCUMENT