



Press and Information

Court of Justice of the European Union
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Judgment in Case C-398/19
Generalstaatsanwaltschaft Berlin

A Union citizen may be extradited to a third State only after consultation with the Member State of which that citizen is a national

As part of that consultation, the Member State of nationality must be informed by the Member State from which extradition is requested of all the elements of fact and law communicated in the extradition request and must be allowed a reasonable time to issue any European arrest warrant in respect of that citizen

BY, who is a national of both Ukraine and Romania, was born in Ukraine and lived in that State until he moved to Germany in 2012. In 2014 he applied for and obtained Romanian nationality as a descendant of Romanian nationals, but he has never resided in Romania.

In March 2016 the German authorities received from the General Prosecutor's Office of Ukraine a request for the extradition of BY, for the purpose of conducting a criminal prosecution. In November 2016 the Generalstaatsanwaltschaft Berlin (General Prosecutor's Office in Berlin, Germany) informed the Romanian Ministry of Justice of the extradition request and asked whether the Romanian authorities envisaged that they would themselves conduct a criminal prosecution of BY. The Romanian Ministry of Justice replied, first, that the Romanian authorities could make a decision to conduct a criminal prosecution only if requested to do so by the Ukrainian judicial authorities and, second, that the issue of a national arrest warrant, as a prerequisite for the issue of a European arrest warrant, was subject to there being sufficient evidence of the guilt of person concerned. That ministry therefore asked the German authorities to provide it with the evidence that had been sent to them by the Ukrainian authorities.

German law prohibits the extradition of German nationals, but not the extradition of nationals of other Member States. Accordingly, the Kammergericht Berlin (Higher Regional Court of Berlin, Germany) considers that the extradition of BY to Ukraine is lawful, but it is uncertain whether that extradition is not incompatible with the principles set out by the Court in the *Petruhhin* judgment,¹ given that the Romanian judicial authorities have not formally made a decision on the possible issue of a European arrest warrant. In the abovementioned judgment, the Court held, in particular, that, when a Member State to which a national of another Member State has moved has received an extradition request from a third State, it is obliged to inform the Member State of which the person whose extradition is requested is a national in order to give the authorities of the latter Member State the opportunity to issue a European arrest warrant for the surrender of that person for criminal prosecution.

That court was uncertain as to the consequences of that judgment for the outcome of the case before it, and submitted to the Court three questions for a preliminary ruling, concerning the interpretation of Articles 18 and 21 TFEU (relating to, respectively, the principle of non-discrimination on grounds of nationality and the right of Union citizens to move and reside freely within the territory of the Member States) and of the *Petruhhin* judgment.

Findings of the Court

¹ Judgment of 6 September 2016, *Petruhhin* (C-182/15; in particular, paragraphs 48 and 50); see also [Press Release No 84/16](#).

The Grand Chamber of the Court examines, first, whether Articles 18 and 21 TFEU are applicable to the situation of a Union citizen such as the person concerned in the main proceedings. In that regard, the Court states that, in accordance with its case-law, a national of one Member State, who thereby has Union citizenship and who is residing in the territory of another Member State, is entitled to rely on Article 21(1) TFEU and falls within the scope of the Treaties, within the meaning of Article 18 TFEU. The fact that BY acquired the nationality of a Member State only at a time when he was already residing in a Member State other than that of which he subsequently became a national has no effect in that respect.

Second, the Court clarifies the obligations incumbent on the Member States in the exchanging of information referred to in the *Petruhhin* judgment. In that regard, the Court states that the Member State from which extradition is requested ('the requested Member State') must put the competent authorities of the Member State of which the person whose extradition is requested is a national in a position to request the surrender of that person by means of a European arrest warrant. In order to do so, the requested Member State must inform those authorities not only of the existence of an extradition request, but also of all the elements of fact and law communicated by the third State requesting extradition in the context of that extradition request. It must also give notice of any change in the situation of the person whose extradition is requested that might be relevant to the possibility of the issue of a European arrest warrant in respect of that person. However, neither of those Member States is obliged, under EU law, to ask the third State that is requesting extradition to send the criminal investigation file, in order to permit the Member State of which the person concerned is a national to assess the possibility that it might itself conduct a criminal prosecution of that person.

The Court states that, provided that that obligation to inform has been respected, the authorities of the requested Member State may continue the extradition procedure and, if appropriate, carry out the extradition of the person concerned where no European arrest warrant has been issued, within a reasonable time, by the authorities of the Member State of which that person is a national. A reasonable time limit must be imposed, by the requested Member State, on those authorities, that time limit being set taking account of all the circumstances of the case, in particular whether the person concerned is in custody on the basis of the extradition procedure and the complexity of the case.

Third, the Court holds that Articles 18 and 21 TFEU cannot be interpreted as meaning that the requested Member State is obliged to refuse the extradition of a Union citizen who is a national of another Member State, and itself to conduct a criminal prosecution of that person for offences committed in a third State, where, as in the main proceedings, the national law of the requested Member State empowers that State to prosecute that Union citizen for certain offences committed in a third State.

In such a situation, if there were an obligation on the requested Member State to refuse extradition and itself to conduct a criminal prosecution, the consequence would be that that Member State would be deprived of the opportunity to decide itself on the appropriateness of conducting a prosecution of that citizen on the basis of national law, and that obligation would go beyond the limits that EU law may impose on the exercise of the discretion enjoyed by that Member State with respect to whether or not prosecution is appropriate in criminal matters. The question of EU law that arises, in a case such as that in the main proceedings, is solely whether the requested Member State is able to adopt a course of action, with respect to that Union citizen, which would be less prejudicial to the exercise of that citizen's right to free movement and residence by considering that he or she should be surrendered to the Member State of which he or she is a national rather than extradited to the third State that is requesting extradition.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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