

Supreme Court

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KKO:2019:26

Extradition of an EU citizen outside of the European Union for the enforcement of the sentence of imprisonment and the risk of inhuman or degrading treatment

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Question to be decided and the facts of the case

Supreme Court judgement KKO 2019:26 involved the question of whether a citizen of another Member State of the European Union could be extradited to a country outside of the European Union for enforcement of his sentence.

A, a citizen of Lithuania, had been sentenced in Turkey in April 2013 to a prison sentence. He had fled from the country in the middle of the enforcement of his sentence.

Turkey requested that Finland extradite A to Turkey for the enforcement of the sentence of imprisonment.

A opposed the request for extradition on the grounds that, due to the conditions in Turkish prisons, he would be in danger of being subjected to inhuman treatment.

The Ministry of Justice requested the opinion of the Supreme Court on whether it was possible to consent to the request.

Applicable provisions and rules

According to section 17 (1) of the Extradition Act of Finland (Extradition Act) the Supreme Court examines whether, taking into consideration the provisions of sections 1 through 10 of the Act or the corresponding provisions of an international agreement binding on Finland, a request for extradition may be granted.

The European Convention on Extradition of 13 December 1957 (Convention), to which both Finland and Turkey are parties, was applicable in the case. The conditions for extradition and the grounds for refusal provided in the Extradition Act are essentially the same as the corresponding provisions of the Convention.

Also articles 21 and 18 of the Treaty on the Functioning of the European Union (TFEU) and article 19 of the Charter of the Fundamental Rights of the European Union apply to the case.

Account should also be taken of article 3 of the European Convention on Human Rights and section 9 (4) of the Constitution of Finland. According to the latter provision, a foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity.

Assessment by the Supreme Court

Citizenship of the Union as a barrier to extradition

A is a citizen of Lithuania, and therefore the prohibition in section 2 of the Extradition Act on extraditing Finnish citizens does not apply to him directly. However, in arriving in Finland A had exercised his freedom of movement under article 21 TFEU. According to Article 18 TFEU, any discrimination on grounds of nationality shall be prohibited within the scope of application of the Treaties.

In a previous opinion based on a judgment of the Court of Justice of the European Union (13 November 2018, C-247/17, EU:C:2018:898) the Supreme Court has held that in a case involving extradition of a EU citizen to a country outside of the European Union for the enforcement of the sentence of imprisonment, he should be treated equally to a Finnish national, if

he is deemed to have a permanent residence in Finland (KKO 2019:12, paragraph 11). On the other hand, the judgment of the Court of Justice referred to provided that if a person may not be regarded as residing permanently in the requested Member State, the issue of his extradition is to be settled on the basis of the applicable national or international law (paragraph 48). Taking into consideration the questions presented in the reference for a preliminary ruling, the Supreme Court held that the Court of Justice had intended that the same procedure used among member states in a case of extradition for the prosecution, was not to be used in connection with requests for extradition for the enforcement of the sentence.

A had only been visiting Finland, and therefore citizenship of the Union did not present a barrier to extradition.

Risk of inhuman or degrading treatment

The above-mentioned judgment of the Court of Justice further noted that in the event that the requested Member State intends to extradite a national from another Member State at the request of a third country, the first Member State must check that the extradition will not infringe the rights guaranteed by the Charter of Fundamental Rights of the European Union, in particular Article 19 (C 247/17, paragraph 49). According to article 19 of the Charter of Fundamental Rights, no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

The judgment of the Court of Justice in the Petruhhin case specifies the requirements for such a review (judgment of 6 September 2016, Petruhhin C-182/15, EU:C:2016:630, paragraphs 57-60). It follows from the judgment that, in so far as the competent authority of the requested Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals in the requesting third State, it is bound to assess the existence of that risk when called upon to decide on extradition of a person to that State. The competent authority of the requested Member State must rely on information that is objective, reliable, specific and properly updated.

A had stated that in section in the prison in Turkey where he had served his sentence had 35 persons instead of the 18 persons allowed. Some of the prisoners had to sleep on the floor. Because of the excessive number of prisoners, the prison had been noisy, and there had been conflicts between prisoners as well as a sense of danger. According to A, the food served in the prison had not been suitable. A also claimed that his health had significantly deteriorated while he was in Turkish prison conditions and that no proper medication had been made available.

According to the report of the Council of Europe on the conditions of detention in Turkey on 15 January 2015 (CPT/Inf (2015) 6), Turkey has new prisons that meet the standards for humane treatment. On the other hand, Turkey also has a number of old prisons with many serious problems, which are described in detail in the report. The Council of Europe's report on its inspection therefore supported A's claims.

In the light of the circumstances noted above, and in order to assess the risk of inhuman or degrading treatment in this case, the Supreme Court asked the Ministry of Justice to request from Turkish authorities' further information regarding in which prison A would be placed and what the conditions were in this prison. The Turkish authorities did not provide the requested additional information by the date set by the Ministry of Justice.

The Supreme Court stated that the appropriateness of treatment cannot be verified only by the fact that Turkey is a party to the European Convention on Human Rights or that Turkey has asserted in its request for extradition that it complies with said Convention. The report of the Council of Europe referred to above indicates a real risk that A may be placed in a prison where the conditions do not meet the requirements of humane treatment required under Article 19 of the Charter or Article 3 of the European Convention on Human Rights. A more recent report that would give a different view of the Turkish prison conditions was not available. In the absence of additional information requested from Turkey or otherwise the Supreme Court considered that it could not disregard the actual and verified risk of inhuman or degrading treatment evidenced by the above report, and held that there was a bar to the extradition of A as referred to in article 19 of the Charter of Fundamental Rights, article 3 of the European Convention on Human Rights and section 9 (4) of the Constitution Act.

Conclusion

In its opinion, the Supreme Court held that the request for the extradition of A may not be granted.

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