



## PRESS RELEASE No 214/22

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Judgment of the Court in Case C-237/21 | Generalstaatsanwaltschaft München (Request for extradition to Bosnia and Herzegovina)

### **Extradition of a Union citizen to a third State in order for him to serve a sentence in that State may be justified to prevent the risk of impunity**

*That is, in particular, the case where the requested Member State is obliged under international law to extradite the person concerned, and the third State which requested extradition does not consent to the sentence being enforced in the requested Member State*

Bosnia and Herzegovina requested that Germany extradite a Bosnian national, who also holds Croatian nationality and is thus a Union citizen, for the purpose of enforcing a custodial sentence.

According to the Higher Regional Court, Munich (Germany), Germany is, in principle, obliged to extradite the individual concerned because of commitments made to Bosnia and Herzegovina under the European Convention on Extradition.

The Higher Regional Court, Munich, queries however whether EU law precludes extradition, particularly in view of the right of Union citizens to move and reside freely within the territory of the Member States, but also of the prohibition on discrimination on grounds of nationality. The German Basic Law prohibits the extradition of Germans to a third State. In such circumstances, EU law permits a difference in treatment between Germans and nationals of other Member States who, like the individual concerned, reside permanently in Germany – in the sense that the latter do not benefit from that prohibition – only if that difference is based on objective considerations and is proportionate to the legitimate objective of national law.

Being uncertain as to the application of the case-law of the Court of Justice when there is an extradition obligation under international law, the Higher Regional Court, Munich, referred certain questions to the Court. It notes that the German authorities informed the Croatian authorities of the extradition request but received no response from them. However, according to German law, **the individual concerned could serve his sentence in Germany if Bosnia and Herzegovina consented to that.**

By its judgment today, the Court of Justice replies that, in that situation, the requested Member State (**Germany**) **must actively seek such consent in order for the sentence to be served in the territory of that Member State, thus ensuring that the risk of impunity is averted while adopting an alternative in respect of the citizen concerned that is less prejudicial to his freedom of movement than his extradition to a third State.**

**Nevertheless, if that consent is not obtained, EU law** (in this case, the right of Union citizens to move and reside freely within the territory of the Member States and the prohibition on discrimination) **does not preclude the requested Member State (Germany) from extraditing the Union citizen concerned pursuant to an international convention. There would otherwise be a risk that the individual concerned would remain unpunished.**

**It is however important to note that, under the Charter of Fundamental Rights of the European Union, extradition must be ruled out where there is a serious risk that the individual concerned would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment in the third State concerned.**

**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 and the summary](#) of the judgment is published on the CURIA website on the day of delivery.

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