



## Reports of Cases

### **Case C-182/15 Aleksi Petruhhin**

(Request for a preliminary ruling from the Augstākā tiesa)

(Reference for a preliminary ruling — Citizenship of the Union — Extradition to a third State of a national of a Member State who has exercised his right to freedom of movement — Scope of EU law — Protection of a Member State's nationals against extradition — No protection for nationals of the other Member States — Restriction of freedom of movement — Justification based on the prevention of impunity — Proportionality — Verification of the guarantees provided for in Article 19 of the Charter of Fundamental Rights of the European Union)

Summary — Judgment of the Court (Grand Chamber), 6 September 2016

1. *Questions referred for a preliminary ruling — Admissibility — Limits — Clearly irrelevant questions and hypothetical questions put in a context not permitting a useful answer — None*

(Art. 267 TFEU)

2. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Request to a Member State from a third State seeking to extradite a Union citizen, a national of another Member State having exercised his right to move freely in the first Member State — Obligation on that Member State to inform the Member State of which the citizen is a national and, should that Member State so request, surrender that citizen to it, in accordance with the provisions on the European arrest warrant and the surrender procedures between Member States — Whether permissible — Condition*

(Arts 18 TFEU and 21 TFEU; Council Framework Decision 2002/584, as amended by Framework Decision 2009/299)

3. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Request to a Member State from a third State seeking to extradite a Union citizen, a national of another Member State having exercised his right to move freely in the first Member State — Obligation to verify compliance with the safeguards established in Article 19 of the Charter of Fundamental Rights of the European Union — Criteria*

(Arts 18 TFEU and 21 TFEU; Charter of Fundamental Rights of the European Union, Art. 19; Council Framework Decision 2002/584, as amended by Framework Decision 2009/299)

1. See the text of the decision.

(see paras 20, 23, 24)

2. Article 18 TFEU and Article 21 TFEU must be interpreted as meaning that, when a Member State to which a Union 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 Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States, as amended by Framework Decision 2009/299, provided that that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory.

In that regard, a situation in which a Member State's national moves to another Member State making use, in his capacity as a Union citizen, of his right to move freely within the European Union falls within the scope of application of the Treaties, within the meaning of Article 18 TFEU, which sets out the principle of non-discrimination on grounds of nationality. However, national rules on extradition allowing the extradition of such a national give rise to a difference in treatment depending on whether the person concerned is a national of the Member State in question or a national of another Member State, in that they result in nationals of other Member States not being granted the protection against extradition enjoyed by nationals of the Member State in question. In so doing, such rules are liable to affect the freedom of nationals of other Member States to move within the European Union and constitute a restriction of their freedom of movement, within the meaning of Article 21 TFEU.

Such a restriction can be justified only where it is based on objective considerations and is proportionate to the legitimate objective of the national provisions. Extradition is a procedure whose aim is to combat the impunity of a person who is present in a territory other than that in which he has allegedly committed an offence. Although the non-extradition of its own nationals is generally counterbalanced by the possibility for the requested Member State to prosecute such nationals for serious offences committed outside its territory, that Member State as a general rule has no jurisdiction to try cases concerning such acts when neither the perpetrator nor the victim of the alleged offence is a national of that Member State. In that context, national rules which allow an extradition request to be granted for the purposes of prosecution and judgment in the third State where the offence is alleged to have been committed appear appropriate to achieve the objective pursued.

In the absence of rules of EU law governing extradition between the Member States and a third State, it is necessary, in order to safeguard EU nationals from measures liable to deprive them of the rights of free movement and residence provided for in Article 21 TFEU, while combatting impunity in respect of criminal offences, to apply all the cooperation and mutual assistance mechanisms provided for in the criminal field under EU law. Consequently, the exchange of information with the Member State of which the person concerned is a national must be given priority in order to afford the authorities of that Member State, in so far as they have jurisdiction, pursuant to their national law, to prosecute that person for offences committed outside national territory, the opportunity to issue a European arrest warrant for the purposes of prosecution. Article 1(1) and (2) of Framework Decision 2002/584 does not preclude, in such a case, the possibility for the Member State of which the alleged offender is a national of issuing a European arrest warrant with a view to the surrender of that person for the purposes of prosecution. In cooperating accordingly with the Member State of which the person concerned is a national and giving priority to that arrest warrant over the extradition request, the host Member State acts in a manner which is less prejudicial to the exercise of the right to freedom of movement while avoiding, as far as possible, the risk of impunity.

(see paras 31-34, 39, 40, 47-50, operative part 1)

3. Where a Member State receives a request from a third State seeking the extradition of a national of another Member State, that first Member State must verify that the extradition will not prejudice the rights referred to in Article 19 of the Charter of Fundamental Rights of the European Union.

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 it is called upon to decide on the extradition of a person to that State. To that end, that authority must rely on information that is objective, reliable, specific and properly updated. That information may be obtained from, *inter alia*, judgments of international courts, such as judgments of the European Court of Human Rights, judgments of courts of the requesting third State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the United Nations.

(see paras 58-60, operative part 2)