



Reports of Cases

Case C-473/15

Peter Schotthöfer & Florian Steiner GbR
v
Eugen Adelsmayr

(Request for a preliminary ruling from the Bezirksgericht Linz)

(Requests for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Extradition of a national of a Member State of the European Union to a third State where he risks being subjected to the death penalty — Citizenship of the Union — Articles 18 and 21 TFEU — Article 19(2) of the Charter of Fundamental Rights of the European Union — Protection against extradition)

Summary — Order of the Court (First Chamber), 6 September 2017

1. *Fundamental rights — Charter of Fundamental Rights of the European Union — Scope — Implementation of EU law — Decision of a Member State to extradite a Union citizen who has made use of his right to move freely in the Union — Included — Decision coming within the scope of Articles 18 and 21 TFEU*

(Arts 18 TFEU and 21 TFEU; Charter of Fundamental Rights of the European Union, Art. 51(1))

2. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Request for extradition addressed to a Member State by a third country seeking extradition of a Union citizen who is a national of another Member State and who has exercised his right to move freely in the first Member State — Obligation to verify that the rights provided for in Article 19 of the Charter of Fundamental Rights of the European Union are safeguarded — Information needed for an assessment*

(Arts 18 TFEU and 21 TFEU; Charter of Fundamental Rights of the European Union, Art. 19(2))

3. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Request for extradition addressed to a Member State by a third country seeking extradition of a Union citizen who is a national of another Member State and who has exercised his right to move freely in the first Member State — Obligation to verify that the rights provided for in Article 19 of the Charter of Fundamental Rights of the European Union are safeguarded — Concept of existence of a serious risk within the meaning of that provision — Requirement of continued liability to death penalty should criminal proceedings be reopened following the extradition — Included*

(Arts 18 TFEU and 21 TFEU; Charter of Fundamental Rights of the European Union, Art. 19(2))

4. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Request for extradition addressed to a Member State by a third country seeking extradition of a Union citizen who is a national of another Member State and who has exercised his right to move freely in the first Member State — Obligation for that Member State to refuse that request where there is a serious risk of the death penalty in the event of extradition*

(Arts 18 TFEU and 21 TFEU; Charter of Fundamental Rights of the European Union, Art. 19(2))

1. As regards the applicability of the Charter to a case such as the main proceedings, it should be borne in mind that the Court has held that the decision of a Member State to extradite a Union citizen, in a situation where that citizen has made use of his right to move freely in the Union by moving from the Member State of which he is a national to another Member State, comes within the scope of Articles 18 and 21 TFEU and, therefore, of Union law for the purposes of Article 51(1) of the Charter (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 31 and 52).

(see para. 19)

2. See the text of the decision.

(see paras 23, 24)

3. See the text of the decision.

(see paras 25, 26)

4. Article 19(2) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a request for extradition originating from a third country concerning a Union citizen who, in exercising his freedom of movement, leaves his Member State of origin in order to reside on the territory of another Member State, must be rejected by the latter Member State where that citizen runs a serious risk of being subjected to the death penalty in the event of extradition.

(see para. 27, operative part)