



Reports of Cases

Case C-191/16

Romano Pisciotti

v

Bundesrepublik Deutschland

(Request for a preliminary ruling from the Landgericht Berlin)

(Reference for a preliminary ruling — Citizenship of the Union — Articles 18 and 21 TFEU — Extradition to the United States of America of a national of a Member State who has exercised his right to freedom of movement — Extradition agreement between the European Union and that third State — Scope of EU law — Prohibition on extradition applied only to own nationals — Restriction on free movement — Justification based on the prevention of impunity — Proportionality — Informing the Union citizen's Member State of origin)

Summary — Judgment of the Court (Grand Chamber), 10 April 2018

1. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Request addressed to a Member State by a third State for the extradition of an EU citizen, a national of another Member State having exercised his right to free movement in the former Member State — Request for extradition made under the EU-USA Agreement on extradition — Situation of the citizen concerned falling within the scope of EU law*

(Arts 18 TFEU and 21 TFEU)

2. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Request addressed to a Member State by a third State for the extradition of an EU citizen, a national of another Member State having exercised his right to free movement in the former Member State — Request for extradition made under the EU-USA Agreement on extradition — Prohibition on extradition laid down in the national law of the Member State to which the request has been made, applied only to its own nationals — Lawfulness — Conditions*

(Arts 18 TFEU and 21 TFEU)

1. EU law must be interpreted as meaning that in a case, such as that in the main proceedings, in which a Union citizen who has been the subject of a request for extradition to the United States of America has been arrested, for the purposes of potentially acceding to that request, in a Member State other than the Member State of which he is a national, the situation of that citizen falls within the scope of EU law, since he has made use of his right to move freely within the European Union and the request for extradition was made under the Agreement on extradition between the European Union and the United States of America of 25 June 2003.

(see para. 35, operative part 1)

2. In a case, such as that in the main proceedings, in which a Union citizen who has been the subject of a request for extradition to the United States of America under the Agreement on extradition between the European Union and the United States of America of 25 June 2003 has been arrested in a Member State other than the Member State of which he is a national, for the purposes of potentially acceding to that request, Articles 18 and 21 TFEU must be interpreted as not precluding the requested Member State from drawing a distinction, on the basis of a rule of constitutional law, between its nationals and the nationals of other Member States and from granting that extradition whilst not permitting extradition of its own nationals, provided that the requested Member State has already put the competent authorities of the Member State of which the citizen is a national in a position to seek the surrender of that citizen pursuant to a European arrest warrant and the latter Member State has not taken any action in that regard.

In that regard, the Court has held that the exchange of information with the Member State of which the person concerned is a national must be given priority in order, where relevant, to afford the authorities of that Member State the opportunity to issue a European arrest warrant for the purposes of prosecution. Thus, when a Member State to which a Union citizen who is a national of another Member State has moved receives an extradition request from a third State with which the former 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, provided that that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 48 and 50). Although that solution was adopted, as appears from paragraph 46 of the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), in a context characterised by the absence of an international agreement on extradition between the European Union and the third State in question, it may be applied in a situation such as that at issue in the main proceedings, in which the EU-USA Agreement gives the requested Member State the option of not extraditing its own nationals. That conclusion cannot be called into question by the argument, put forward by some of the governments which have submitted observations, that, in essence, the priority given to a request for surrender pursuant to a European arrest warrant over a request for extradition issued by the United States of America would undermine the effectiveness of the rule, in Article 10(2) and (3) of the EU-USA Agreement, that the competent authority of the requested Member State, in the event of such alternatives, is to determine to which State it will surrender the person on the basis of all of the relevant factors. Indeed, there is nothing inevitable in the possibility that the cooperation mechanism set out in paragraph 51 of the present judgment might preclude a request for extradition to a third State by giving priority to a European arrest warrant, on the ground that this would be less prejudicial to the exercise of the right to freedom of movement (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 49). Thus, in order to safeguard the objective of preventing the risk of impunity for the person concerned in respect of the offences alleged against him in the request for extradition, a European arrest warrant issued by a Member State other than the requested Member State must, at least, relate to the same offences and, as appears from paragraph 50 of the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), the issuing Member State must have jurisdiction, pursuant to national law, to prosecute that person for such offences, even if committed outside its territory.

(see paras 51-54, 56, operative part 2)