



## Reports of Cases

OPINION OF ADVOCATE GENERAL  
BOT  
delivered on 25 July 2018<sup>1</sup>

**Case C-247/17**

**Denis Raugevicius**

(Request for a preliminary ruling from the Korkein oikeus (Supreme Court, Finland))

(Reference for a preliminary ruling — Citizenship of the Union — Articles 18 and 21 TFEU — Request to a Member State by a third State 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 — Extradition request for the purpose of enforcing a custodial sentence, not for the purpose of prosecution — Protection of nationals against extradition — Restriction on freedom of movement — Objective of preventing the risk that persons who have committed an offence go unpunished — Objective of increasing a sentenced person's chances of social rehabilitation)

1. This request for a preliminary ruling will require the Court to extend its case-law on the extradition of Union citizens who have made use of their right to move freely in a Member State other than their Member State of nationality.
2. While the case-law established by the Court in its judgment of 6 September 2016, *Petruhhin*,<sup>2</sup> relates to extradition requests made by third States for the purpose of prosecution, this case concerns an extradition request by the Russian authorities to the Finnish authorities in respect of Mr Denis Raugevicius, a national of both Lithuania and Russia, for the purpose of enforcing a sentence.
3. In this Opinion, I will propose that the Court rule that Articles 18 and 21 TFEU must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, where 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 for the purpose of enforcing a custodial sentence imposed there, the requested Member State is required to examine whether, in the light of the connections between the sentenced person and the requested Member State, the enforcement of the sentence in that Member State is likely to further the person's social rehabilitation. If that is the case, that Member State must apply all the international cooperation instruments in criminal matters available to it vis-à-vis the requesting third State in order to secure the latter's consent to the sentence at issue being enforced on the former's territory, where appropriate after adjustment in the light of the penalty provided for in its criminal legislation for an offence of the same kind.

<sup>1</sup> Original language: French.

<sup>2</sup> C-182/15, EU:C:2016:630.

## I. Legal context

### A. *The European Convention on Extradition*

4. Article 1 of the European Convention on Extradition of the Council of Europe of 13 December 1957<sup>3</sup> is worded as follows:

‘The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.’

5. Article 6 of the European Convention on Extradition, headed ‘Extradition of nationals’, provides:

‘1

- a A Contracting Party shall have the right to refuse extradition of its nationals.
- b Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term “nationals” within the meaning of this Convention.
- c Nationality shall be determined as at the time of the decision concerning extradition. ...

2 If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.’

6. The Republic of Finland made the following declaration in connection with Article 6 of the European Convention on Extradition:

‘Within the meaning of this Convention the term “nationals” shall denote nationals of Finland, Denmark, Iceland, Norway and Sweden as well as aliens domiciled in these States.’

### B. *Finnish law*

7. Under the third subparagraph of Paragraph 9 of the Suomen perustuslaki (Finnish Constitution) (802/2007), ‘a Finnish national may not be extradited or transferred to another country against his will. However, it may be laid down by law that a Finnish national may be extradited or transferred on account of a crime or for legal proceedings ... to a country in which his fundamental rights and judicial protection are guaranteed’.

8. The laki rikoksen johdosta tapahtuvasta luovuttamisesta (Law on extradition for offences) (456/1970)<sup>4</sup> of 7 July 1970 provides, in Paragraph 2, that Finnish nationals may not be extradited.

<sup>3</sup> ‘The European Convention on Extradition’.

<sup>4</sup> ‘The Law on extradition’.

9. The first subparagraph of Paragraph 14 of the Law on extradition provides:

‘The Oikeusministeriö [(Ministry of Justice, Finland)] shall decide whether a request for extradition is to be accepted.’

10. The first subparagraph of Paragraph 16 of the Law on extradition states:

‘If the person who is the subject of an extradition request has stated, in the investigation or in a letter sent to the Ministry of Justice before a decision is taken, that he considers that the legal conditions for extradition are not satisfied, the ministry must, if it does not immediately reject the request for extradition, request an opinion of the Korkein oikeus [(Supreme Court, Finland)] on the point before taking a decision. The ministry can also otherwise request an opinion if it considers it necessary.’

11. Under Paragraph 17 of the Law on extradition, ‘the Korkein oikeus [(Supreme Court)] shall examine, having regard to the provisions of Paragraphs 1 to 10 of this law and the corresponding rules of an international agreement binding on Finland, whether the request for extradition may be accepted. If the Korkein oikeus [(Supreme Court)] considers that there is an obstacle to extradition, the request for extradition may not be accepted’.

12. In addition, a custodial sentence imposed by a court of a State that is not a member of the European Union may be enforced in Finland under the laki kansainvälisestä yhteistoiminnasta eräiden rikosoikeudellisten seuraamusten täytäntöönpanossa (Law on international cooperation for the enforcement of certain criminal law penalties) (21/1987) of 16 January 1987. Paragraph 3 of that law is worded as follows:

‘A penalty which has been imposed by a court of a foreign State may be enforced in Finland if:

(1) the judgment has become final and is enforceable in the State in which it was given;

...

(3) the State in which the penalty was imposed has requested or agreed to enforcement.

A penalty involving loss of liberty may be enforced in Finland in accordance with the first subparagraph if the convicted person is a Finnish national or a foreign national permanently residing in Finland and the convicted person has agreed to enforcement. ...’

## **II. The facts in the main proceedings and the questions referred for a preliminary ruling**

13. On 1 February 2011, Mr Raugevicius — who holds both Lithuanian and Russian nationalities — was convicted in Russia of a drugs offence, namely the possession, without intent to supply, of a compound containing 3.04 grams of heroin. He was given a suspended prison sentence.

14. On 16 November 2011, a court of the region of Leningrad (Russia) lifted the suspension due to a breach of supervision obligations and ordered Mr Raugevicius to serve four years’ imprisonment.

15. An international arrest warrant was issued for Mr Raugevicius on 12 July 2016.

16. On 12 December 2016, a käräjäoikeus (district court, Finland) imposed on Mr Raugevicius a prohibition on leaving the country.

17. On 27 December 2016, the Russian Federation sent the Republic of Finland an extradition request seeking the arrest of Mr Raugevicius and his extradition to Russia for the purpose of enforcing a custodial sentence.

18. Mr Raugevicius challenged his extradition on the ground that, inter alia, he had lived in Finland for a considerable length of time and had two children there who are Finnish nationals.

19. On 7 February 2017, the Ministry of Justice asked the Korkein oikeus (Supreme Court) for an opinion on whether there is a legal obstacle to Mr Raugevicius's extradition to Russia.

20. The Korkein oikeus (Supreme Court) states that when it intervenes by giving its opinion in the context of an extradition request, its position is different from the position it normally has in the administration of justice. However, it submits that even in that context, it must be regarded as a 'court or tribunal' within the meaning of Article 267 TFEU, in the light of the case-law of the Court,<sup>5</sup> given that it is established by law, is permanent, its jurisdiction is compulsory, its procedure is *inter partes*, it applies rules of law and is independent. The Korkein oikeus (Supreme Court) adds that it indeed has a dispute before it, since Mr Raugevicius challenged the legal conditions for his extradition and the Ministry of Justice considered that the extradition request should not be refused immediately. Finally, the opinion it is to issue is binding in that the extradition request cannot be granted if it finds that there is an obstacle to extradition. In those circumstances, the Korkein oikeus (Supreme Court) takes the view that it has been called upon to rule in proceedings that are intended to lead to a decision of a judicial nature.

21. The Korkein oikeus (Supreme Court) states that the extradition request is based on the European Convention on Extradition which, like other international conventions, does not require a Member State that refuses to extradite its own nationals to take measures for the enforcement of a sentence imposed in another State. There is no extradition convention between the European Union and the Russian Federation, nor has the Republic of Finland signed a bilateral extradition agreement with the Russian Federation.

22. According to the Korkein oikeus (Supreme Court), international conventions for the recognition of decisions in criminal matters and the transfer of sentenced persons may be relevant, since the aim of those conventions is to ensure that the sentenced person is able to serve his sentence in his State of nationality or residence, which may further his rehabilitation and social reintegration.

23. The Korkein oikeus (Supreme Court) points out that, in the judgment of 6 September 2016, *Petruhhin*,<sup>6</sup> the Court ruled for the first time on how EU law affects the extradition out of the European Union of a Union citizen under an international extradition agreement entered into by a Member State. It recalls that that judgment concerned an extradition request submitted by a third State with a view to the prosecution of an offence.

24. The Korkein oikeus (Supreme Court) must now examine a different situation. The question before it is therefore whether the Court's guidelines in its judgment of 6 September 2016, *Petruhhin*,<sup>7</sup> can be applied directly also to situations in which a Union citizen is the subject of a request for extradition to a third State for the purpose of enforcing a prison sentence. It is thus necessary to determine whether the mechanisms for cooperation in criminal matters under EU law may be applied — and, if so, how — in a situation in which an enforceable judgment in respect of the offence has already been delivered in a third State.

<sup>5</sup> The Korkein oikeus (Supreme Court) refers in particular, in that regard, to the judgment of 19 December 2012, *Epitropos tou Elegktikou Synedriou* (C-363/11, EU:C:2012:825, paragraph 18).

<sup>6</sup> C-182/15, EU:C:2016:630.

<sup>7</sup> C-182/15, EU:C:2016:630.

25. The Korkein oikeus (Supreme Court) recalls that, under Article 21 TFEU, every Union citizen has the right to move and reside freely within the territory of the Member States. Freedom of movement may be affected by the existence of a risk that such a citizen may be extradited to a third State if he leaves the Member State of which he is a national and travels to another Member State. The Korkein oikeus (Supreme Court) considers that it is immaterial, as regards that impediment to the freedom of movement, whether the extradition request concerns a prosecution or the enforcement of a sentence in a third State. Furthermore, in the view of the referring court, the fact that the person concerned also holds the nationality of the third State seeking his extradition is not relevant to the examination of his situation under EU law. The Korkein oikeus (Supreme Court) nevertheless seeks confirmation from the Court on those points.

26. The referring court points out that Finnish nationals and nationals of other Member States are treated differently because only the latter can be extradited under Finnish law. It observes that in situations falling within the scope of EU law, a Member State's own nationals and the nationals of other Member States can be placed in different positions only if there are grounds for justification of the kind allowed under the Court's case-law. The Korkein oikeus (Supreme Court) mentions the objective of preventing the risk that persons who have committed an offence go unpunished, which was considered to be a legitimate objective in the judgment of 6 September 2016, *Petruhhin*.<sup>8</sup> Extradition for the purpose of prosecution and for the purpose of enforcing a conviction meet that objective. It is therefore necessary, according to that court, to examine whether, with respect to the enforcement of a sentence, Finnish nationals are in a different position from nationals of other Member States.

27. The Korkein oikeus (Supreme Court) notes that while international extradition agreements generally contain an obligation to prosecute the national if he is not extradited, there is no obligation to ensure enforcement of the sentence on national territory in the event of a refusal to extradite. This is apparent, in particular, from Article 6(2) of the European Convention on Extradition. Furthermore, the Republic of Finland, like many other Member States, is not a party to a convention such as that on the International Validity of Criminal Judgments,<sup>9</sup> which imposes a general obligation to enforce convictions handed down in other States.

28. The Korkein oikeus (Supreme Court) adds that, under Finnish law, the enforcement of a foreign conviction handed down in a third State requires the consent not only of the State where the conviction took place, but also of the State of enforcement and that of the sentenced person, except in exceptional circumstances which are not at issue here. It therefore appears that the protection against extradition enjoyed solely by Finnish nationals is not justified by the existence of an obligation on the State to ensure, or the existence a genuine possibility of ensuring, the enforcement in Finland of sentences imposed abroad against its own nationals.

29. The Korkein oikeus (Supreme Court) also notes that when an extradition request is submitted for the purpose of enforcing a prison sentence, the application of a cooperation mechanism based on the bringing of a prosecution entails the commencement of fresh proceedings for the same offence, which may infringe the *ne bis in idem* principle. Even though that principle, enshrined in Article 50 of the Charter of Fundamental Rights of the European Union, applies between EU Member States and is not applied in the same way outside the European Union, some Member States nevertheless observe that principle also in the case of convictions handed down in a third State.

<sup>8</sup> C-182/15, EU:C:2016:630, paragraph 37.

<sup>9</sup> The Council of Europe Convention on the International Validity of Criminal Judgments, signed in the Hague on 28 May 1970.



30. Moreover, the bringing of a prosecution in the requested Member State may be impossible for other legal reasons. For example, in the present case, if Mr Raugevicius were a Finnish national, he could not be prosecuted in Finland, even though the Republic of Finland is entitled to bring criminal proceedings based on nationality for offences committed abroad. Since the offence concerned only a small quantity of narcotics intended for personal use, the right to bring a prosecution in Finland would be time-barred under domestic law.

31. The Korkein oikeus (Supreme Court) wonders whether it is appropriate to apply the cooperation mechanism, mentioned by the Court in its judgment of 6 September 2016, *Petruhhin*,<sup>10</sup> for the purpose of prosecution where a conviction in respect of the offence has already been handed down in a third State.

32. The referring court states that it appears to be possible, according to the logic of the judgment of 6 September 2016, *Petruhhin*,<sup>11</sup> to inform the Member State of which the Union citizen is a national and to wait and see if it issues a European arrest warrant for the purpose of prosecution or for the purpose of enforcing the criminal judgment under its national law. But in this case, the question arises as to the period within which that Member State must take its decision, in the interests of the person whose extradition is sought. In addition, in a case such as this, it is not certain that the Member State of which the person concerned is a national will consider it appropriate to bring a prosecution, on account of, in particular, its right to prosecute being time-barred or the domestic application of the *ne bis in idem* principle. In such a situation, it is necessary to ascertain whether the requested State is then required to extradite the national of another Member State or whether, on the contrary, it must refuse extradition, and what specific factors are to be taken into account.

33. In those circumstances, the Korkein oikeus (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Are national provisions on extradition to be assessed with respect to the freedom of movement of nationals of another Member State in the same way regardless of whether the extradition request of a third State on the basis of an extradition convention concerns the enforcement of a custodial sentence or a prosecution as in the case giving rise to the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630)? Is it relevant that the person who is the subject of the extradition request, as well as being a citizen of the Union, is a national of the State which has made that request?
- (2) Does a national law [of a Member State] under which only its own nationals are not extradited outside the EU for the enforcement of a penalty unjustifiably disadvantage nationals of another Member State? Are the mechanisms of EU law by means of which an objective, acceptable as such, may be achieved in a less prejudicial manner applicable also in an enforcement situation? How is a request for extradition to be answered in a situation in which, such mechanisms being applied, the request is notified to another Member State which, however, does not, for example because of legal obstacles, adopt measures concerning its nationals?

### III. Assessment

34. I recall that what is at stake in the questions referred for a preliminary ruling by the Korkein oikeus (Supreme Court) is whether there is a legal obstacle to the extradition of Mr Raugevicius to Russia, in which case the Finnish authorities would not be able to grant the extradition request made by that third State.

<sup>10</sup> C-182/15, EU:C:2016:630.

<sup>11</sup> C-182/15, EU:C:2016:630.

35. By its questions, which should be examined together, the referring court asks, in essence, whether Articles 18 and 21 TFEU must be interpreted as meaning that, when dealing with an extradition request falling within the scope of the European Convention on Extradition which was submitted by a third State for the purpose of enforcing a sentence imposed in that State, nationals of a Member State other than the requested Member State must benefit from the rule which prohibits the extradition by the latter of its own nationals.

36. As a preliminary remark, I note that the sentence to be enforced is the outcome of a judgment delivered by a court of the region of Leningrad (Russia) which lifted the suspended prison sentence imposed on Mr Raugevicius on 1 February 2011 and ordered him to serve four years' imprisonment. Since the imposition of that new sentence appears to be motivated by Mr Raugevicius's failure to comply with supervisory obligations, it is likely that the second sentence was handed down in his absence. If that point were to be confirmed by the referring court, it would have to examine whether the criminal judgment to be enforced was delivered with due regard to the right to a fair trial.

37. That said, it is apparent from the judgment of 6 September 2016, *Petruhhin*,<sup>12</sup> that, in the absence of an international agreement between the European Union and the third State concerned, the rules on extradition fall within the competence of the Member States.<sup>13</sup>

38. However, in situations covered by EU law, the national rules concerned must have due regard to EU law.<sup>14</sup>

39. Thus, the situations falling within the scope of application of Article 18 TFEU, read in conjunction with the provisions of the FEU Treaty on Union citizenship, include those involving the exercise of the freedom to move and reside within the territory of the Member States, as conferred by Article 21 TFEU.<sup>15</sup>

40. Accordingly, it must be considered that the situation of a Union citizen such as Mr Raugevicius, a Lithuanian national, who has made use of his right to move freely within the European Union by settling in a Member State other than his Member State of nationality, falls within the scope of application of the Treaties, within the meaning of Article 18 TFEU.

41. That finding is in no way affected by the fact that, as pointed out by the Korkein oikeus (Supreme Court), the person concerned is also a national of the third State seeking his extradition. Holding dual nationality of a Member State and a third State cannot deprive the person concerned of the freedoms he derives from EU law as a national of a Member State.<sup>16</sup> Equally immaterial to the determination of the scope of EU law is the fact that, unlike the situation in the case giving rise to the judgment of 6 September 2016, *Petruhhin*,<sup>17</sup> the extradition request at issue in the main proceedings was made for the purpose of enforcing a custodial sentence, not for the purpose of prosecution.

42. Within the scope of application of the Treaties, Article 18 TFEU prohibits any discrimination on grounds of nationality.

<sup>12</sup> C-182/15, EU:C:2016:630.

<sup>13</sup> See judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraph 26).

<sup>14</sup> See judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraph 27).

<sup>15</sup> See judgment of 10 April 2018, *Pisciotti* (C-191/16, EU:C:2018:222, paragraph 33).

<sup>16</sup> See judgment of 7 July 1992, *Micheletti and Others* (C-369/90, EU:C:1992:295, paragraph 15).

<sup>17</sup> C-182/15, EU:C:2016:630.

43. Article 6(1) of the European Convention on Extradition allows State parties to refuse to extradite their own nationals. However, that discretion must be exercised in accordance with primary law and, in particular, with the rules of the FEU Treaty on equal treatment and the freedom of movement of Union citizens.<sup>18</sup>

44. Accordingly, the application by a Member State of a provision of its domestic law under which no national is to be extradited must comply with the FEU Treaty, in particular with Articles 18 and 21 thereof.<sup>19</sup>

45. In that regard, the Court has held that national rules of a Member State on extradition which give rise to a difference in treatment depending on whether the person concerned is a national of that Member State or a national of another Member State, in so far as they result in nationals of other Member States who have moved to the requested Member State not being granted the protection against extradition enjoyed by nationals of the latter Member State, are liable to affect the freedom of nationals of other Member States to move within the European Union.<sup>20</sup>

46. It follows that, in a situation such as that at issue in the main proceedings, the unequal treatment which allows the extradition of a Union citizen who is a national of a Member State other than the requested Member State, such as Mr Raugevicius, represents a restriction on freedom of movement, within the meaning of Article 21 TFEU.<sup>21</sup>

47. Such a restriction can be justified only where it is based on objective considerations and is proportionate to the legitimate objective of the national extradition rules at issue.<sup>22</sup>

48. The Court has held that the objective of preventing the risk that persons who have committed an offence go unpunished is to be seen in the context of the prevention and combating of crime. That objective must be considered, in the context of the area of freedom, security and justice without internal frontiers referred to in Article 3(2) TEU, to be a legitimate objective of EU law.<sup>23</sup>

49. However, measures which restrict a fundamental freedom, such as that laid down in Article 21 TFEU, may be justified by objective considerations only if they are necessary for the protection of the interests which they are intended to secure and only in so far as those objectives cannot be attained by less restrictive measures.<sup>24</sup>

50. In the light of the case-law of the Court, as described above, the question therefore arises whether the Republic of Finland is able to adopt a course of action with regard to Mr Raugevicius which would be less prejudicial to the exercise of his right to freedom of movement than deciding to extradite him to Russia.

51. In determining whether there is an alternative measure less prejudicial to the exercise of the rights conferred by Article 21 TFEU, which would be as effective as a decision to extradite in achieving the objective of preventing the risk of impunity for a person on whom a custodial sentence has been imposed in a third State, the Court, in its judgment of 6 September 2016, *Petruhhin*,<sup>25</sup> regarding an extradition request for the purpose of prosecution, 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

18 See judgment of 10 April 2018, *Pisciotti* (C-191/16, EU:C:2018:222, paragraph 42).

19 See judgment of 10 April 2018, *Pisciotti* (C-191/16, EU:C:2018:222, paragraph 43).

20 See judgment of 10 April 2018, *Pisciotti* (C-191/16, EU:C:2018:222, paragraph 44 and the case-law cited).

21 See, by analogy, judgment of 10 April 2018, *Pisciotti* (C-191/16, EU:C:2018:222, paragraph 45 and the case-law cited).

22 See judgment of 10 April 2018, *Pisciotti* (C-191/16, EU:C:2018:222, paragraph 46 and the case-law cited).

23 See judgment of 10 April 2018, *Pisciotti* (C-191/16, EU:C:2018:222, paragraph 47 and the case-law cited).

24 See judgment of 10 April 2018, *Pisciotti* (C-191/16, EU:C:2018:222, paragraph 48 and the case-law cited).

25 C-182/15, EU:C:2016:630.



relevant, to afford the authorities of that Member State the opportunity to issue a European arrest warrant for the purpose of prosecution. Thus, according to the Court, 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 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 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States,<sup>26</sup> as amended by Council Framework Decision 2009/299/JHA of 26 February 2009,<sup>27</sup> provided that that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory.<sup>28</sup>

52. In its judgment of 10 April 2018, *Pisciotti*,<sup>29</sup> the Court held that that approach, which emerged in a context characterised by the absence of an international agreement on extradition between the European Union and the third State concerned, may be applied in a situation in which such an agreement gives the requested Member State the option of not extraditing its own nationals.

53. To my mind, however, the circumstances specific to this case prevent the view being taken that the activation of the cooperation mechanism between the requested Member State and the Member State of nationality, as highlighted by the Court in its judgment of 6 September 2016, *Petruhhin*,<sup>30</sup> can be regarded as an appropriate alternative to extradition.

54. As indicated, that mechanism is based on the notification by the requested Member State to the Member State of which the person concerned is a national in order to afford the authorities of the latter the opportunity to issue, where appropriate, a European arrest warrant for the purpose of prosecution.

55. I recall that the extradition request at issue in the main proceedings relates to the enforcement of the sentence imposed on Mr Raugevicius in Russia. It is therefore necessary to examine not whether a fresh prosecution could be conducted against Mr Raugevicius by the judicial authorities of his Member State of nationality, namely the Republic of Lithuania, but rather whether the enforcement of that sentence within the European Union is an alternative to extradition. I note also that an approach designed to afford the Lithuanian judicial authorities the opportunity of issuing a European arrest warrant for the purpose of bringing a fresh prosecution against Mr Raugevicius would be contrary to the *ne bis in idem* principle.

56. I also do not think that it is conceivable to devise a mechanism enabling the Lithuanian judicial authorities to issue a European arrest warrant for the purpose of enforcing the sentence on Lithuanian soil. Besides the legal obstacle arising from the fact that the sentence to be enforced was imposed by a court of a third State, I should point out that, in such a situation, the Finnish authorities would be entitled to invoke the ground for optional non-execution of the European arrest warrant, set out in Article 4(6) of Framework Decision 2002/584, under which the executing judicial authority may refuse to execute a warrant issued for the purpose of enforcing a custodial sentence where the requested person 'is staying in, or is a national or a resident of the executing Member State', and that State undertakes to enforce the sentence in accordance with its domestic law.

<sup>26</sup> OJ 2002 L 190, p. 1.

<sup>27</sup> OJ 2009 L 81, p. 24; 'Framework Decision 2002/584'.

<sup>28</sup> See judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraphs 48 and 50).

<sup>29</sup> C-191/16, EU:C:2018:222.

<sup>30</sup> C-182/15, EU:C:2016:630.

57. The Court has already held that that ground for optional non-execution has, in particular, the objective of enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person's chances of social rehabilitation when the sentence imposed on him expires.<sup>31</sup>

58. It must be stated, as the Korkein oikeus (Supreme Court) did in its order for reference, that Mr Raugevicius challenged his extradition on the ground that, inter alia, he had lived in Finland for a considerable length of time and had two children there who are Finnish nationals.

59. That has not been questioned in the present proceedings. Furthermore, I note that the Court was not able to put questions during the hearing held on 14 May 2018 to either the Republic of Finland or Mr Raugevicius's representative with a view to having those facts confirmed and the connections between Mr Raugevicius and that Member State clarified, since neither of them considered it necessary to attend the hearing. I will therefore rely on the only facts available, namely those set out in the order for reference.

60. The fact that Mr Raugevicius has lived in Finland for a considerable length of time and has two children there who are Finnish nationals leads me to the view that, in order to further his social rehabilitation after serving his sentence, the conviction handed down in Russia should be enforced on Finnish territory, where appropriate after adjustment in the light of the penalty provided for in Finnish criminal legislation for an offence of the same kind.

61. The Republic of Finland's treatment of the extradition request made by the Russian authorities must therefore take into account the rehabilitation function of the sentence, which is closely linked to the concept of 'human dignity' enshrined in Article 1 of the Charter of Fundamental Rights.

62. The enforcement of a sentence takes place after the final judgment imposing it has been delivered. It is, therefore, the last stage in the criminal process, during which effect is given to the penalty imposed.

63. It covers all the measures capable of ensuring the physical enforcement of the sentence and of ensuring the social rehabilitation of the sentenced person. In that context, the competent judicial authorities are required to determine how the sentence is to be served and organised, deciding, for example, on placement in the community, on permitted absences and day release, on the serving of a sentence in instalments, on the suspension of a sentence, on the early or conditional release of a prisoner or on his being placed under electronic surveillance. The law governing the enforcement of sentences may also include measures that apply after the sentenced person has been released, such as placement under judicial supervision or participation in rehabilitation programmes, or measures for the compensation of victims.

64. In that perspective, all measures concerning how the sentence is to be enforced and organised must be tailored to the individual by the judicial authorities, in such a way as to further the social integration or rehabilitation of the sentenced person, while at the same time respecting the interests of society and the rights of victims and the aim of preventing repeat offending.

65. Enforcement of the sentence in the Member State where the person concerned resides with his family helps bridge the gap between him and the community he will rejoin after serving his sentence. The fixing of that place for the enforcement of the sentence is necessary in order to preserve the social ties that the person concerned has forged, which facilitated his integration in the society at issue and will therefore further his social rehabilitation after the custodial sentence has been served.

<sup>31</sup> See, in particular, judgment of 29 June 2017, *Popławski* (C-579/15, EU:C:2017:503, paragraph 21 and the case-law cited).

66. A transfer is a measure of enforcement of a sentence.<sup>32</sup> It enables the sentence to be tailored to the individual, with the objective of furthering the social rehabilitation of the sentenced person.

67. As the Court has already pointed out, the social rehabilitation of the Union citizen in the Member State in which he has become genuinely integrated is not only in his interest, but also in that of the European Union in general.<sup>33</sup>

68. The weight attached by the EU legislature to the objective of social rehabilitation is expressly confirmed, in particular, by Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union,<sup>34</sup> Article 3(1) of which states that the framework decision's aim is to 'facilitat[e] the social rehabilitation of the sentenced person'.

69. Furthermore, the European Court of Human Rights has highlighted the obligation of Member States to take into account the objective of rehabilitation of prisoners when shaping their penal policies.<sup>35</sup>

70. In the light of the objective of increasing the chances of reintegrating into society a person given a custodial sentence in a third State, the nationals of the requested Member State and those of other Member States residing in that State should not, as a rule, be treated differently.<sup>36</sup>

71. Nationals of other Member States who have a genuine, stable and lasting connection with the society of the requested Member State are in a situation comparable to that of nationals of the latter Member State. Treating them differently by not giving them the same chances of social rehabilitation would therefore constitute discrimination on grounds of nationality contrary to Article 18 TFEU. It is inconsistent with the very concept of 'citizenship of the Union' to claim that only persons holding the nationality of the requested Member State are capable of having such a connection.<sup>37</sup>

72. The rehabilitation function of the sentence thus serves as an equal treatment rule which, as such, is an integral part of the status of Union citizen.

73. I note in that regard that a difference in treatment between Finnish nationals and the nationals of other Member States residing in Finland cannot be justified, in the present case, by the objective of preventing impunity for persons who have committed an offence, as the Court made clear in its judgment of 6 September 2016, *Petruhhin*.<sup>38</sup>

74. The enforcement on Finnish territory of the sentence imposed on Mr Raugevicius in Russia seems to be an option for two reasons.

32 See, in that regard, ECtHR, 27 June 2006, *Szabó v. Sweden*, CE:ECHR:2006:0627DEC002857803, p. 11.

33 See, in particular, judgment of 17 April 2018, *B and Vomero* (C-316/16 and C-424/16, EU:C:2018:256, paragraph 75 and the case-law cited).

34 OJ 2008 L 327, p. 27.

35 See, in particular, ECtHR, 30 June 2015, *Khoroshenko v. Russia*, CE:ECHR:2015:0630JUD004141804 (§ 121).

36 See, by analogy, as regards Article 4(6) of Framework Decision 2002/584, judgment of 5 September 2012, *Lopes Da Silva Jorge* (C-42/11, EU:C:2012:517, paragraph 40 and the case-law cited).

37 See, to the same effect, Opinion of Advocate General Mengozzi in *Lopes Da Silva Jorge* (C-42/11, EU:C:2012:151, points 50 and 51), who moreover observes that 'the corollary of the freedom of movement and residence enshrined in European Union law is that it is now no longer a matter of irrebuttable presumption that a sentenced person has the best chance of reintegrating into society only in the State of which he is a national' (point 51).

38 C-182/15, EU:C:2016:630, paragraph 37.

75. In the first place, I think that possibility follows from the rules set out in the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983.<sup>39</sup>

76. As stated in its preamble, that convention establishes a mechanism for international cooperation in criminal matters that ‘should further the ends of justice and the social rehabilitation of sentenced persons’.

77. The conditions for transfer include the requirement, set out in Article 3(1)(a) of the Convention on the Transfer of Sentenced Persons, that ‘th[e] person [be] a national of the administering State’. Under Article 3(4) of the convention, ‘any State may, at any time, by a declaration addressed to the Secretary-General of the Council of Europe, define, as far as it is concerned, the term “national” for the purposes of this Convention’.<sup>40</sup> By a declaration deposited on 29 January 1987, the Republic of Finland stated that ‘in accordance with Article 3(4), [it] understands by the term “national”, a national of the administering State or *aliens having their residence in the administering State*’.<sup>41</sup>

78. The Republic of Finland therefore chose to extend the benefit of the provisions of the Convention on the Transfer of Sentenced Persons to ‘aliens having their residence’ on its territory.

79. When examining the possibility of enforcing the sentence in Finland, account should also be taken, where appropriate, of the Additional Protocol to the Convention on the Transfer of Sentenced Persons of 18 December 1997,<sup>42</sup> Article 2 of which concerns persons who have absconded from the sentencing State.

80. In the second place, and in any event, the possibility of enforcing on Finnish territory the sentence imposed on Mr Raugevicius in Russia stems from the Law on international cooperation for the enforcement of certain criminal law penalties, Paragraph 3 of which provides that a sentence imposed by a court of a foreign State may be enforced in Finland if the judgment has become final and is enforceable in the State in which it was delivered and if the State in which the sentence was imposed has requested or agreed to enforcement. Under the same paragraph, a custodial sentence may be enforced in Finland if the sentenced person is a Finnish national or a foreign national permanently residing in Finland and has agreed to enforcement.

81. It follows from the foregoing that, in order to achieve the objective of preventing the risk that persons who have committed an offence may go unpunished and the objective of increasing the requested person’s chances of social rehabilitation when the sentence imposed on him has expired, it is not necessary, in circumstances such as those at issue in the main proceedings, to call in aid a cooperation mechanism, along the lines of the one identified by the Court in its judgment of 6 September 2016, *Petruhhin*,<sup>43</sup> between the requested Member State and the Member State of nationality, which is difficult to apply in practice and the consequences of which are uncertain. In view of the connections that Mr Raugevicius seems to have with Finland, it would make no sense, from the standpoint of combating impunity or that of social rehabilitation, to support the

<sup>39</sup> See, by analogy, with regard to the taking into account of that convention with a view to establishing whether one Member State could enforce a sentence imposed in another Member State, judgment of 5 September 2012, *Lopes Da Silva Jorge* (C-42/11, EU:C:2012:517, paragraphs 44 to 49).

<sup>40</sup> The Explanatory Report to the Convention on the Transfer of Sentenced Persons states, in that connection, that ‘this possibility, corresponding with that provided in Article 6[(1)(b)] of the European Convention on Extradition, is to be interpreted in a wide sense: the provision is intended to enable Contracting States to extend the application of the convention to persons other than “nationals” within the strict meaning of their nationality legislation as, for instance, stateless persons or citizens of other States who have established roots in the country through permanent residence’ (p. 4, § 20).

<sup>41</sup> Emphasis added. The Court drew attention to the existence of that declaration in its judgment of 5 September 2012, *Lopes Da Silva Jorge* (C-42/11, EU:C:2012:517, paragraph 48).

<sup>42</sup> The Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons of 22 November 2017 has not yet entered into force.

<sup>43</sup> C-182/15, EU:C:2016:630.

enforcement in Lithuania of the sentence imposed on him. I therefore take the view that, in those circumstances, there is no need to inform the Member State of which the person concerned is a national in order to afford it the opportunity to issue a European arrest warrant for the purpose of prosecution or enforcement of a sentence.

82. On the other hand, the Member State dealing with an extradition request in that situation is required, under Articles 18 and 21 TFEU, to apply all the international cooperation instruments in criminal matters available to it vis-à-vis the requesting third State in order to secure the latter's consent to the prison sentence imposed on the person concerned being enforced on the former's territory, where appropriate after adjustment in the light of the penalty provided for in its criminal legislation for an offence of the same kind. In cooperating in that way with the third State requesting extradition for the purpose of enforcing the sentence on its territory, the requested 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 that, without enforcement of the sentence, the offence giving rise to the conviction will remain unpunished. By doing so, the requested Member State furthers the social rehabilitation of the sentenced person after he has served his sentence. For that reason, I think it is crucial to take account of the objective of furthering social rehabilitation alongside the objective of combating impunity, by giving priority to an approach capable of attaining both those objectives.

83. In short, in determining whether alternative measures less prejudicial to the free movement of a Union citizen than his extradition are as effective in achieving the objective of preventing the risk that persons who have committed an offence go unpunished, the referring court must take account of another, equally fundamental objective of EU law, namely to facilitate the social rehabilitation of sentenced persons. From that perspective, it is necessary, as the European Commission rightly pointed out, to examine not only the forms of internal cooperation in criminal matters in force within the European Union, but also the forms of cooperation in criminal matters between Member States and third States under international conventions, particularly those concluded within the framework of international organisations with which the European Union cooperates.

84. I would add, finally, that a decision of the Finnish authorities refusing to grant the extradition request made by the Russian Federation could not be regarded as contrary to the provisions of the European Convention on Extradition.

85. As stated above, Article 6(1)(a) of the European Convention on Extradition allows the Republic of Finland to refuse to extradite its own nationals. It should be noted that, in accordance with the possibility provided by Article 6(1)(b) of that convention, the Republic of Finland chose to define in a declaration the term 'nationals', within the meaning of that convention, as 'nationals of Finland, Denmark, Iceland, Norway and Sweden *as well as aliens domiciled in these States*'.<sup>44</sup>

86. In the present case, the Republic of Finland's intention as expressed in that declaration to provide equal treatment with respect to protection against extradition cannot, as regards Union citizens such as Mr Raugevicius, remain a dead letter. Articles 18 and 21 TFEU require the Republic of Finland to give full effect to it.

87. I consider, in consequence, that Articles 18 and 21 TFEU must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, where 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 for the purpose of enforcing a custodial sentence imposed there, the requested Member State is required to examine whether, in the light of the connections between the sentenced person and the requested Member State, the enforcement of the sentence in that Member State is likely to

<sup>44</sup> Emphasis added.



further the person's social rehabilitation.<sup>45</sup> If that is the case, that Member State must apply all the international cooperation instruments in criminal matters available to it vis-à-vis the requesting third State in order to secure the latter's consent to the sentence at issue being enforced on the former's territory, where appropriate after adjustment in the light of the penalty provided for in its criminal legislation for an offence of the same kind.

#### IV. Conclusion

88. In the light of the above considerations, I propose that the Court should answer the questions referred for a preliminary ruling by the Korkein oikeus (Supreme Court, Finland) as follows:

Articles 18 and 21 TFEU must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, where 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 for the purpose of enforcing a custodial sentence imposed there, the requested Member State is required to examine whether, in the light of the connections between the sentenced person and the requested Member State, the enforcement of the sentence in that Member State is likely to further the person's social rehabilitation. If that is the case, that Member State must apply all the international cooperation instruments in criminal matters available to it vis-à-vis the requesting third State in order to secure the latter's consent to the sentence at issue being enforced on the former's territory, where appropriate after adjustment in the light of the penalty provided for in its criminal legislation for an offence of the same kind.

<sup>45</sup> The requested Member State may, in that regard, rely by analogy on the criteria set out in recital 9 of Framework Decision 2008/909. See, in that connection, Martufi, A., 'Assessing the resilience of "social rehabilitation" as a rationale for transfer: A commentary on the aims of Framework Decision 2008/909/JHA', *New Journal of European Criminal Law*, Sage Publishing, New York, 2018, vol. 9, issue 1, pp. 43 to 61.