



Reports of Cases

Case C 897/19 PPU

**Criminal proceedings
against
I.N.**

(Request for a preliminary ruling from the Vrhovni sud)

Judgment of the Court (Grand Chamber), 2 April 2020

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — EEA Agreement — Non-discrimination — Article 36 — Freedom to provide services — Scope — Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis — Agreement on the surrender procedure between the Member States of the European Union and Iceland and Norway — Extradition to a third State of an Icelandic national — Protection of a Member State's nationals against extradition — No equivalent protection for nationals of another State — Icelandic national who was granted asylum under national law before acquiring Icelandic citizenship — Restriction of freedom of movement — Justification based on the prevention of impunity — Proportionality — Verification of the guarantees provided for in Article 19(2) of the Charter of Fundamental Rights of the European Union)

1. *EU law — Principles — Equal treatment — Discrimination on grounds of nationality — Prohibition — Scope — Difference in treatment between nationals of Member States and nationals of a third State that is a member of the European Free Trade Association — Precluded (Art. 18 TFEU)*

(see paragraphs 39, 40)

2. *Citizenship of the Union — Provisions of the Treaty — Scope ratione personae — National of a third State that is a member of the European Free Trade Association — Not included (Arts 20 and 21 TFEU)*

3. *International agreements — Agreement establishing the European Economic Area — Scope — Freedom to provide services — Identical legal scope as the European Union provisions — National of a State of the European Free Trade Association, which is a party to the Agreement on the European Economic Area, moving to a Member State to receive services there — Included — Consequence — Situation of that national falling within the scope of application of EU law*

(Art. 56 TFEU; EEA Agreement, Art. 36)

(see paragraphs 49, 50, 52-54)

4. *International agreements — Agreement establishing the European Economic Area — Freedom to provide services — Request sent to a Member State by a third State seeking the extradition of a national of a State of the European Free Trade Association, which is a party to the Agreement on the European Economic Area, who has moved to that Member State to exercise his or her right to receive services there — Member State prohibiting the extradition of its own nationals — Obligation for that Member State to inform the EFTA State and, should that State so request, surrender its national to it, in accordance with the provisions of an agreement on the surrender procedure concluded between the European Union and that EFTA State — Condition*
(EEA Agreement, Art. 36; Agreement between the European Union and Iceland and Norway on the surrender procedure)

(see paragraphs 56, 57, 59, 60, 62, 69, 70, 71, 75-77, operative part.)

5. *International agreements — Agreement establishing the European Economic Area — Freedom to provide services — Request sent to a Member State by a third State seeking the extradition of a national of a State of the European Free Trade Association, which is a party to the Agreement on the European Economic Area, who has moved to that Member State to exercise his or her right to receive services there — Obligation to verify protection of the guarantees provided for in Article 19(2) of the Charter of Fundamental Rights of the European Union — Information needed for an assessment — Grant of refugee status to that national before acquisition of nationality of the EFTA State — Particularly substantial nature of that fact*
(Charter of Fundamental Rights of the European Union, Art. 19(2); EEA Agreement, Art. 36).

(see paragraphs 63-68, 77, operative part)

Résumé

When a Member State is required to rule on an extradition request by a third State concerning a national of a State of the European Free Trade Association (EFTA), which is a party to the Agreement on the European Economic Area (EEA), it must verify that that national will not be subject to the death penalty, torture, or other inhuman or degrading treatment or punishment

Before proposing to execute the request for extradition, the Member State must inform the EFTA State of the request, to enable that State to seek the surrender of its national

In the judgment in *Ruska Federacija* (Case C 897/19 PPU), delivered on 2 April 2020 in an urgent preliminary reference procedure, the Grand Chamber of the Court has ruled on the obligations of a Member State which is called upon to rule on an extradition request made by a third State concerning a national of a State that is not a member of the European Union but which is a member of the European Free Trade Association (EFTA) and a party to the Agreement on the

European Economic Area (EEA).¹ The Court held that the requested Member State must first of all verify, in accordance with Article 19(2) of the Charter of Fundamental Rights of the European Union ('the Charter'), that, in the event of extradition, the person concerned would not run the risk of being subject to the death penalty, torture, or other inhuman or degrading treatment or punishment. In the context of that verification, a particularly substantial piece of evidence is the fact that the person concerned, before acquiring the nationality of the EFTA State concerned, was granted asylum by that State, precisely on account of the criminal proceedings which are the basis of the extradition request. In addition, the Court held that, before proposing to execute that request, that Member State must inform the EFTA State, so as to enable it to seek the surrender of its national, provided that that EFTA State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory.

In this case, on 20 May 2015, a Russian national was the subject of an international wanted persons notice published by Interpol's bureau in Moscow. On 30 June 2019, that national, who in the meantime had acquired Icelandic nationality, was arrested in Croatia on the basis of that international wanted persons notice. On 6 August 2019, the Croatian authorities received an extradition request from Russia. The Croatian court responsible for ruling on the extradition considered that the legal conditions for extradition were satisfied and permitted it.

The person concerned then sought to have that decision set aside before Vrhovni sud (Supreme Court, Croatia). In that context, he invoked the risk of torture and inhuman or degrading treatment or punishment if extradited to Russia and the fact that, before he had acquired Icelandic nationality, Iceland had recognised his status as a refugee, precisely on account of the criminal proceedings to which he was subject in Russia. He also alleged a failure correctly to apply the judgment in *Petruhhin*² in which the Court held that when a Member State receives an extradition request concerning a European Union citizen, a national of another Member State and located in its territory, it must inform the latter Member State and, should it so request, surrender that citizen, in accordance with Framework Decision 2002/584,³ provided that the Member State of which the citizen holds the nationality has jurisdiction to prosecute him or her for offences committed outside his or her national territory.

In this case, the Vrhovni Sud (Supreme Court) asked the Court of Justice whether the interpretation given in the *Petruhhin* judgment should be followed in a situation concerning someone who was not an EU citizen but an Icelandic citizen, Iceland being an EFTA State which is party to the EEA Agreement.

In the first place, the Court examined whether EU law applied to that situation. In that regard, it stated that, since it does not concern an EU citizen who has moved to a Member State other than that of his or her nationality, but a national of a third State, Article 18 TFEU (non-discrimination on grounds of nationality) and Article 21 TFEU (freedom of movement and residence of EU citizens), which were interpreted in the *Petruhhin* judgment, do not apply in this case. However, the situation does properly fall within the scope of application of EU law and, more specifically, that of the EEA Agreement, which, as an international agreement concluded by the European Union, is an integral part of EU law. To arrive at that conclusion, the Court first pointed out that Iceland enjoyed a special relationship with the European Union since, in addition to being a

¹ Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3).

² Judgment of 6 September 2016, *Petruhhin* (C-182/15); see also Press Release 84/2016.

³ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

member of the Schengen area and a party to the EEA Agreement, that third State participated in the common European asylum system and had concluded with the European Union an Agreement on the surrender procedure.⁴ The Court then observed that Article 36 of the EEA Agreement guarantees the freedom to provide services and does so in a manner that is identical, in essence, to Article 56 TFEU. Finally, it held that the freedom to provide services, within the meaning of both Article 56 TFEU and the EEA Agreement, includes the freedom to travel to another State to receive services there, which was the situation in the present case, as the Icelandic national concerned wished to spend his holidays in Croatia and thus to receive services there related to tourism.

In the second place, after stating that the provisions of the Charter are also applicable, since the situation at issue is covered by EU law, the Court clarified the protection offered by Article 19(2) of the Charter, under the terms of which no one may be extradited to another State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. Therefore the Court held that a Member State that receives an extradition request must verify, before executing that extradition, that it would not prejudice the rights laid down by that article. In that regard, it emphasised that, in this case, the fact the person concerned was granted asylum in Iceland was a particularly substantial piece of evidence for the purposes of that verification. That was all the more the case since that grant was based precisely on the criminal proceedings which were the basis of the extradition request. Therefore, in the absence of specific facts, such as significant changes in the situation in Russia or evidence demonstrating that the person concerned had concealed those criminal proceedings at the time he applied for asylum, the decision of the Icelandic authorities granting that application must lead Croatia to refuse the extradition.

In the third place, if the Member State that received the extradition request considers that the Charter does not preclude its execution, the Court recalled that national rules prohibiting the extradition of nationals of that Member State, as is the case in Croatia, give rise to a difference in treatment in that they result in not granting nationals of other EFTA States, which are parties to the EEA Agreement, the same protection against extradition. Thus, those rules are liable to affect the freedom to provide services, within the meaning of Article 36 of the EEA Agreement. The Court next observed that 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. In this case, the objective of preventing the risk of impunity of persons who are present in a territory other than that in which they are alleged to have committed the offence of which they are accused, is a legitimate one. Furthermore, rules that allow the extradition of those persons to a third State appear appropriate to achieve that objective. However, as regards the proportionality of such a restriction, the Court considered that priority should be given to the exchange of information with the EFTA State of which the person concerned was a national, in order to give it the opportunity of issuing a request for the surrender of its national for the purpose of prosecution. As regards Iceland, since Framework Decision 2002/584 was not applicable, such surrender could be proposed on the basis of the Agreement on the surrender procedure, the provisions of which are very similar to those of the framework decision.

⁴ Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (OJ 2006 L 292, p. 2), which was approved, on behalf of the European Union, by Article 1 of Council Decision 2014/835/EU of 27 November 2014 on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (OJ 2014 L 343, p. 1), and which entered into force on 1 November 2019.

Thus, in conclusion, the Court held that the outcome upheld in the *Petruhhin* judgment must be applied by analogy to an Icelandic national who, as regards a third State seeking his extradition, is in a situation that is objectively comparable to that of a citizen of the European Union to whom, in accordance with Article 3(2) TEU, the European Union offers an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured.