



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

13 November 2018*

(Reference for a preliminary ruling — European Union Citizenship — Articles 18 and 21 TFEU — Request to a Member State by a third country seeking extradition of an EU citizen who is a national of another Member State and who has exercised his right to free movement in the first Member State — Request made for the purpose of enforcing a custodial sentence and not for the purpose of prosecution — Prohibition on extradition applied only to own nationals — Restriction on free movement — Justification based on the prevention of impunity — Proportionality)

In Case C-247/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 12 May 2017, received at the Court on 16 May 2017, in the proceedings relating to the extradition of

Denis Raugevicius,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, M. Vilaras, E. Regan, F. Biltgen and C. Lycourgos, Presidents of Chambers, M. Ilešič, E. Levits, L. Bay Larsen, C.G. Fernlund (Rapporteur) and S. Rodin, Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 14 May 2018,

after considering the observations submitted on behalf of

- the Finnish Government, by H. Leppo, acting as Agent,
- the Czech Government, by M. Smolek, J. Vlácil and J. Pavliš, acting as Agents,
- the German Government, by T. Henze, M. Hellmann and by S. Weinkauff, acting as Agents,
- Ireland, by M. Browne, J. Quaney and A. Joyce, acting as Agents, and by M. Gray, Barrister-at-Law,
- the Cypriot Government, by E. Zachariadou, E. Neofytou and M. Spiliotopoulou, acting as Agents,
- the Lithuanian Government, by D. Kriauciūnas and V. Čepaitė, acting as Agents,

* Language of the case: Finnish.

- the Hungarian Government, by M.Z. Fehér, G. Koós and R. Kissné Berta, acting as Agents,
- the Austrian Government, by G. Eberhard, acting as Agent,
- the Romanian Government, by C.-R. Canțăr, R. Mangu, E. Gane and C.-M. Florescu, acting as Agents,
- the Swedish Government, by A. Falk, H. Shev, C. Meyer-Seitz, L. Zettergren and A. Alriksson, acting as Agents,
- the European Commission, by S. Grünheid, R. Troosters and M. Huttunen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 July 2018,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the first paragraph of Article 18 and Article 21 TFEU.
- 2 The request has been made in an application for extradition made by the Russian authorities to the Finnish authorities concerning Mr Denis Raugevicius, a Lithuanian and Russian national, for the purpose of enforcing a custodial sentence.

Legal context

The European Convention on Extradition

- 3 Article 1 of the European Convention on Extradition of 13 December 1957 (‘the European Convention on Extradition’) provides:

‘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.’

- 4 Article 6 of that convention, 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.’

- 5 Article 10 of that convention, entitled ‘Lapse of time’, provides:

‘Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment.’

- 6 Under Article 17 of that convention:

‘If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.’

- 7 The Republic of Finland made a declaration pursuant to Article 6 of the European Convention on Extradition in the following terms:

‘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.’

Finnish law

- 8 Under the third subparagraph of Paragraph 9 of the Finnish Constitution, in the version applicable to the main proceedings, ‘Finnish citizens shall not be ... extradited or transferred from Finland to another country against their will. However, it may be laid down by an Act that, due to a criminal act [or] for the purpose of legal proceedings ... a Finnish citizen can be extradited or transferred to a country in which his or her human rights and judicial protection are guaranteed.’

- 9 Under Paragraph 2 of the rikoksen johdosta tapahtuvasta luovuttamisesta annettu laki (456/1970) (Law (456/1970) on extradition for offences, ‘the Law on extradition’), a Finnish citizen may not be extradited.

- 10 The first subparagraph of Paragraph 14 of the Law on extradition provides:

‘The Ministry of Justice shall decide whether a request for extradition is to be accepted.’

- 11 The first subparagraph of Paragraph 16 of that law 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.’

12 Article 17 of the Law on extradition is worded as follows:

‘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 cannot be allowed.’

13 A sentence of imprisonment imposed by a court of a country other than an EU Member State may be enforced in Finland in accordance with the kansainvälisestä yhteistoiminnasta eräiden rikosoikeudellisten seuraamusten täytäntöönpanosta annettu laki (21/1987) (Law (21/1987) on international cooperation for the enforcement of certain criminal law sanctions). Article 3 of that law provides:

‘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. ...’

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 On 1 February 2011, Mr Raugevicius was convicted by a Russian court of a drugs offence, namely the possession, without intent to supply, of a compound containing 3.04 grams of heroin for which he was given a suspended prison sentence.

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

16 On 12 July 2016, an international arrest warrant was issued for Mr Raugevicius.

17 On 12 December 2016, a court of first instance in Finland imposed an order prohibiting him from leaving that Member State.

18 On 27 December 2016, the Russian Federation sent to the Finnish authorities a request seeking the arrest of Mr Raugevicius and his extradition to Russia for the purpose of enforcing a custodial sentence.

19 Mr Raugevicius challenged his extradition on the ground, inter alia, that he had lived in Finland for a considerable length of time and that he was the father of two children residing in that Member State who are of Finnish nationality.

20 On 7 February 2017, the Ministry of Justice asked the Korkein oikeus (Supreme Court) for an opinion on whether there is any legal barrier to extraditing Mr Raugevicius to Russia.

- 21 The Korkein oikeus (Supreme Court) considers that it is a ‘court or tribunal’ for the purposes of the Court’s case-law relating to Article 267 TFEU, even where its involvement is to provide an opinion in connection with an extradition request. It states that it meets the criteria pertaining to that concept, which were recalled by the Court, *inter alia*, in its judgment of 19 December 2012, *Epitropos tou Elegktikou Synedriou* (C-363/11, EU:C:2012:825, paragraph 18), 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. Furthermore, it is dealing with a dispute, in that Mr Raugevicius has contested his extradition and the Ministry of Justice has not taken the view that the request from the Russian Federation should be rejected immediately. Finally, the Korkein oikeus (Supreme Court) adds that the opinion which it must give is binding in that the extradition request at issue cannot be granted if it were to find that there is an obstacle to the extradition sought.
- 22 The referring court states that, in the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), the Court held, on the basis of Articles 18 and 21 TFEU, that the provisions concerning extradition may influence the freedom of nationals of other Member States to move and reside in the territory of the Member States. Accordingly, they are also to be assessed from the point of view of non-discrimination.
- 23 The Korkein oikeus (Supreme Court), however, mentions that there are differences between the present case, concerning an extradition request for the purpose of serving a sentence, and the case giving rise to that judgment, concerning an extradition request for the purpose of prosecution.
- 24 In particular, that court states that, although, in principle, there is an obligation on the requested Member State to proceed against its own nationals, in the situation where it does not extradite them, there is no corresponding obligation to make them serve, on its territory, the sentence imposed on them by a third country.
- 25 In those circumstances, the Korkein oikeus (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court:
- ‘(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 country, 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 whose extradition is sought, as well as being a citizen of the Union, is a national of the State which has made the request for extradition?
- (2) Does a national law [of a Member State] under which only its own nationals are not extradited outside the European Union 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 also applicable in an enforcement situation? How is a request for extradition to be answered in a situation in which, in accordance with such mechanisms, the request is notified to another Member State which, however, does not, because of legal obstacles, for instance, adopt measures concerning its nationals?’

Consideration of the questions referred

- 26 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 18 and 21 TFEU must be interpreted as meaning that, where an extradition request has been made by a third country for an EU citizen who has exercised his right to free movement, not for the purpose of prosecution, but for the purpose of enforcing a custodial sentence, the requested Member State, whose national law prohibits the extradition of its own nationals out of the

European Union for the purposes of the enforcement of a sentence and makes provision for the possibility that such a sentence pronounced abroad may be served on its territory, is required to ascertain whether there is an alternative to extradition which is less prejudicial to the exercise of the right to free movement.

- 27 In that regard, it should be recalled that an EU citizen, such as Mr Raugevicius, a national of a Member State, namely Lithuania, who moved to another Member State, namely the Republic of Finland, made use of his right to move freely, so that his situation falls within the scope of Article 18 TFEU, which lays down the principle of non-discrimination on grounds of nationality (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 31).
- 28 Furthermore, a national rule which prohibits only Finnish nationals from being extradited introduces a difference in treatment between those nationals and nationals of other Member States. In so doing, such a rule gives rise to unequal treatment that is liable to affect the freedom of nationals of other Member States to move within the European Union (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 32).
- 29 The fact that a national of a Member State other than the Member State to which the extradition request was made, such as Mr Raugevicius, also holds the nationality of the third country which made that request does not invalidate that conclusion. 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 (see, to that effect, judgment of 7 July 1992, *Micheletti and Others*, C-369/90, EU:C:1992:295, paragraph 15).
- 30 It follows that, in a situation such as the one in the main proceedings, unequal treatment which allows the extradition of an EU citizen who is a national of another Member State, such as Mr Raugevicius, gives rise to a restriction on the freedom of movement, within the meaning of Article 21 TFEU (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 33).
- 31 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 (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 34 and the case-law cited).
- 32 In that regard, the Court has accepted that preventing the risk of impunity for persons who have committed an offence must be regarded as a legitimate objective and may justify a restrictive measure, provided that it is necessary for the protection of the interests which it is intended to guarantee and in so far as those objectives cannot be attained by less restrictive measures (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 37 and 38).
- 33 Thus, the Court held in paragraph 39 of the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), that extradition is a procedure the aim of which 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. In that judgment, which concerned an extradition request for the purposes of a prosecution, the Court stated in the same paragraph that 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, where 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. The Court concluded that extradition thus prevents offences committed in the territory of a State by persons who have fled that territory from remaining unpunished.
- 34 The referring court nevertheless asks whether those considerations also apply to a case of an extradition request for the purpose of enforcing a sentence.

- 35 That court has expressed doubts in that regard and states that, although the European Convention on Extradition, in Article 6(2), makes it possible for the requested Member State to prosecute its own nationals whom it does not extradite, it does not require a State which refuses to extradite its own citizens to adopt measures aimed at enforcing a sentence pronounced by a court of another State which is party to that convention. That court and a number of the Governments which presented observations to the Court of Justice also submit that a fresh prosecution of a person who has already been tried and sentenced in the requesting State may be contrary to the principle of *ne bis in idem*, according to which a person may not be tried twice for the same offence.
- 36 However, although the principle of *ne bis in idem*, as guaranteed by national law, may be an obstacle to the prosecution by a Member State of persons covered by an extradition request for the purpose enforcing a sentence, the fact remains that, in order to prevent the risk of such persons remaining unpunished, there are mechanisms under national law and/or international law which make it possible for those persons to serve their sentences, in particular, in the State of which they are nationals and, in doing so, increase their chances of social reintegration after they have completed their sentences.
- 37 That applies in particular to the Convention on the Transfer of Sentenced Persons of 21 March 1983 to which all Member States, like the Russian Federation, are parties. That convention allows a person who has been sentenced in the territory of a State which is a signatory to that convention to apply under Article 2 to be transferred to the territory of his country of origin in order to serve the sentence imposed on him, and the recitals of that convention state that the aim of such a transfer is, inter alia, to further the social rehabilitation of sentenced persons by allowing foreigners who are deprived of their liberty as a result of their commission of a criminal offence to serve their sentences within their own society (see, to that effect, judgment of 20 January 2005, *Laurin Effing*, C-302/02, EU:C:2005:36, paragraphs 12 and 13).
- 38 In addition, some States, such as the Republic of Finland, also make it possible for their own nationals to serve a sentence pronounced in another State on their territory.
- 39 Consequently, with regard to an extradition request to enforce a sentence, it must be stated, first, that, although a prosecution may not necessarily be commenced by the requested Member State against its own nationals, mechanisms nevertheless exist for them to be able to serve their sentence in the territory of that Member State. Secondly, and by contrast, extradition makes it possible to prevent EU citizens who are not nationals of that Member State from evading enforcement of their sentences.
- 40 As was recalled in paragraph 33 above, given that extradition is intended to prevent the risk of impunity for nationals of Member States other than the requested Member State, where the national legislation at issue in the main proceedings makes it possible to extradite nationals of Member States other than the Republic of Finland, it is necessary to examine the proportionate nature of that legislation by ascertaining whether there are measures which are equally effective in achieving that objective but which are less prejudicial to the freedom of movement of those nationals (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 41) by taking into account all the factual and legal circumstances of the case.
- 41 In the present case, it is clear from the order for reference that Mr Raugevicius opposed his extradition on the ground that he had lived in Finland for a considerable length of time and that he was the father of two children of Finnish nationality residing in that Member State. Those circumstances have not been called into question in the proceedings before the Court. Thus, it cannot be ruled out that Mr Raugevicius may be regarded as a foreign national permanently residing in Finland, for the purposes of the second paragraph of Article 3 of the Law on international cooperation for the enforcement of certain criminal law sanctions.
- 42 If that is the case, it is clear from that provision that Mr Raugevicius could serve the sentence which he received in Russia in Finland, provided that both Russia and Mr Raugevicius himself consent to this.

- 43 In that regard, it must be recalled that, in accordance with settled case-law, citizenship of the Union is intended to be the fundamental status of nationals of the Member States (see, inter alia, judgments of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458, paragraph 31; of 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124, paragraph 41, and of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 30).
- 44 Every Union citizen may therefore rely on the prohibition of discrimination on grounds of nationality laid down in Article 18 TFEU in all situations falling within the scope *ratione materiae* of EU law, and those situations include, as in the dispute in the main proceedings, the exercise of the freedom conferred by Article 21 TFEU to move and reside within the territory of the Member States (see judgments of 4 October 2012, *Commission v Austria*, C-75/11, EU:C:2012:605, paragraph 39, and of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraph 59).
- 45 In addition, although, in the absence of EU legal provisions on the extradition of nationals of Member States to Russia, Member States retain the power to adopt such provisions, those Member States are required to exercise that power in accordance with EU law, in particular, the prohibition on discrimination laid down in Article 18 TFEU and the freedom to move and reside within the territory of the Member States guaranteed by Article 21(1) TFEU.
- 46 In view of the aim of preventing the risk of impunity, Finnish nationals, on the one hand, and, on the other, nationals of other Member States who reside permanently in Finland and demonstrate a certain degree of integration into that State's society are in a comparable situation (see, by analogy, judgment of 6 October 2009, *Wolzenburg*, C-123/08, EU:C:2009:616, paragraph 67). It is for the referring court to establish whether Mr Raugevicius falls within that category of nationals of other Member States.
- 47 Therefore, Articles 18 and 21 TFEU require that nationals of other Member States who reside permanently in Finland and whose extradition is requested by a third country for the purpose of enforcing a custodial sentence should benefit from the provision preventing extradition from being applied to Finnish nationals and may, under the same conditions as Finnish nationals, serve their sentences on Finnish territory.
- 48 If, on the other hand, a citizen such as Mr Raugevicius may not be regarded as residing permanently in the requested Member State, the issue of his extradition is to be settled on the basis of the applicable national or international law.
- 49 It must also be stated that, in the event that the requested Member State intends to extradite a national from another Member State at the request of a third country, the first Member State must check that the extradition will not infringe the rights guaranteed by the Charter of Fundamental Rights of the European Union, in particular Article 19 (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 60).
- 50 In the light of the foregoing considerations, the answer to the questions referred is that Articles 18 and 21 TFEU must be interpreted as meaning that, where an extradition request has been made by a third country for an EU citizen who has exercised his right to free movement, not for the purpose of prosecution, but for the purpose of enforcing a custodial sentence, the requested Member State, whose national law prohibits the extradition of its own nationals out of the European Union for the purpose of enforcing a sentence and makes provision for the possibility that such a sentence pronounced abroad may be served on its territory, is required to ensure that that EU citizen, provided that he resides permanently in its territory, receives the same treatment as that accorded to its own nationals in relation to extradition.

Costs

- 51 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Articles 18 and 21 TFEU must be interpreted as meaning that, where an extradition request has been made by a third country for an EU citizen who has exercised his right to free movement, not for the purpose of prosecution, but for the purpose of enforcing a custodial sentence, the requested Member State, whose national law prohibits the extradition of its own nationals out of the European Union for the purpose of enforcing a sentence and makes provision for the possibility that such a sentence pronounced abroad may be served on its territory, is required to ensure that that EU citizen, provided that he resides permanently in its territory, receives the same treatment as that accorded to its own nationals in relation to extradition.

[Signatures]