



Reports of Cases

ORDER OF THE COURT (First Chamber)

6 September 2017*

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

In Case C-473/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bezirksgericht Linz (District Court, Linz, Austria), made by decision of 24 July 2015, received at the Court on 7 September 2015, in the proceedings

Peter Schotthöfer & Florian Steiner GbR

v

Eugen Adelsmayr,

THE COURT (First Chamber)

composed of R. Silva de Lapuerta, President of the Chamber, E. Regan, J.-C. Bonichot, A. Arabadjiev and C.G. Fernlund (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Peter Schotthöfer & Florian Steiner GbR, by A. Hawel, E. Eypeltauer, A. Gigitner and N. Fischer, Rechtsanwälte,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Czech Government, by J. Vláčil and M. Smolek, acting as Agents,
- Ireland, by E. Creedon and L. Williams and by D. Kelly and A. Joyce, acting as Agents, and by M. Gray, Barrister,

* Language of the case: German.

- the Hungarian Government, by M. Tátrai and M.Z. Fehér, acting as Agents,
- the European Commission, by R. Troosters and S. Grünheid, acting as Agents,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of Article 18 TFEU and Article 6, Article 19(2) and Articles 47 and 50 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between Peter Schotthöfer & Florian Steiner GbR and Mr Eugen Adelsmayr concerning payment of damages due to cancellation of a contract on grounds of fear of being extradited.

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

- 3 Peter Schotthöfer & Florian Steiner, a law firm established in Munich (Germany), invited Mr Adelsmayr, an Austrian physician residing in Austria, to speak in January 2015 at a conference on working conditions and litigation in the United Arab Emirates, where he had practised as an anaesthetist and intensive care physician for a number of years beginning in 2004.
- 4 In February 2009, one of the patients that Mr Adelsmayr was treating in the United Arab Emirates, who was in serious condition and had suffered several heart attacks, died following an operation and after suffering yet another heart attack. Mr Adelsmayr was blamed for the death.
- 5 After a complaint was lodged by a doctor of the hospital where Mr Adelsmayr was practising, an investigation was carried out, with that doctor participating. The report of that investigation made a finding of murder and manslaughter.
- 6 In 2011 proceedings were commenced in Dubai (United Arab Emirates), in the course of which the public prosecution service requested the death penalty for Mr Adelsmayr. In 2012, however, he left the United Arab Emirates. In his absence he was sentenced to life imprisonment in interim proceedings which could be resumed at any time and in which he would still be liable to the death penalty.
- 7 Criminal proceedings were also instituted against Mr Adelsmayr in Austria involving the same charges as those lodged against him in the United Arab Emirates. On 5 May 2014, however, those proceedings were discontinued by the Austrian Public Prosecutor's Office, which stated that 'the defendant was able to present a prima facie case to show that the proceedings brought in Dubai appeared to have been motivated by a hate campaign against him'.
- 8 The Austrian authorities recommended to Mr Adelsmayr that he write to certain States to inquire whether he could enter their territory without risking being turned over to the authorities of the United Arab Emirates.
- 9 In October 2014, Mr Adelsmayr received the offer from Peter Schotthöfer & Florian Steiner relating to the conference described in paragraph 3 above. That offer led to the signing of a contract.

10 Point 5.1 of that contract deals with payment of damages in the event of cancellation of the contract and reads as follows:

‘In the event that the presentation forming the subject of this agreement is cancelled for reasons attributable to the speaker within one month of the date of the presentation, the speaker undertakes to pay the organiser a lump-sum reimbursement of expenses in the amount of EUR 150.’

11 At the end of November 2014, following tensions that had arisen between the Republic of Austria and the Kingdom of Saudi Arabia, Mr Adelsmayr began to have misgivings about travelling to Germany to give his presentation there. He asked the German authorities to grant him safe-conduct, adding that a prompt response was necessary, as the presentation could no longer be cancelled after 15 December 2014.

12 On 12 December 2014, having received no response from the German authorities, Mr Adelsmayr informed Peter Schotthöfer & Florian Steiner in writing that he was cancelling his presentation.

13 Relying on point 5.1 of their contract signed with Mr Adelsmayr, Peter Schotthöfer & Florian Steiner sent him a letter of formal notice to pay the amount of EUR 150, followed on 3 February 2015 by an application for an order to pay.

14 The referring court states that, on the date of its reference to the Court of Justice, no international arrest warrant had been issued in respect of Mr Adelsmayr. That court is uncertain as to whether the presentation in question was cancelled for reasons attributable to Mr Adelsmayr or whether his misgivings about entering German territory were well founded.

15 In those circumstances, the Bezirksgericht Linz (District Court, Linz, Austria) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Is the principle of non-discrimination laid down in Article 18 TFEU to be interpreted as meaning that, where a Member State has laid down a provision in its legal system, such as Article 16(2) of the Basic Law of the Federal Republic of Germany, which prohibits the extradition of German citizens to non-Member States, the provision also applies to citizens of other Member States residing in the Member State at issue?
- (2) Are Articles 19(2) and 47 of [the Charter] to be interpreted as meaning that a Member State of the European Union must reject an application for extradition emanating from a non-Member State concerning an EU citizen residing in that Member State where the criminal proceedings from which the application for extradition arose and the decision rendered in absentia in the non-Member State did not respect the minimum standard of international law and the non-mandatory principles of the public order of the European Union (*ordre public*) or the right to a fair trial?
- (3) Lastly, is Article 50 of [the Charter] or the principle *ne bis in idem* secured in the case-law of the Court of Justice to be interpreted as precluding further prosecution by a non-Member State in the case of a first conviction in the non-Member State followed by the discontinuing of proceedings in a Member State of the European Union for lack of real grounds justifying prosecution?
- (4) In the event that one of the first three questions is answered in the affirmative, is, inter alia, Article 6 of [the Charter] (“right to liberty”) to be interpreted as meaning that an EU citizen may not be held in custody for extradition where a non-Member State makes such an application for extradition?’

Consideration of the questions referred

- 16 Under Article 99 of its Rules of Procedure, where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 17 That provision must be applied in the present case.
- 18 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 19(2) and Article 47 of the Charter must be interpreted as meaning that a request for extradition originating from a third country concerning a Union citizen who, in exercising his freedom of movement, leaves his Member State of origin in order to reside on the territory of another Member State, must be rejected by the latter Member State where that citizen runs a serious risk of being subjected to the death penalty in the event of extradition.
- 19 As regards the applicability of the Charter to a case such as the main proceedings, it should be borne in mind that the Court has held that the decision of a Member State to extradite a Union citizen, in a situation where that citizen has made use of his right to move freely in the Union by moving from the Member State of which he is a national to another Member State, comes within the scope of Articles 18 and 21 TFEU and, therefore, of Union law for the purposes of Article 51(1) of the Charter (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 31 and 52).
- 20 The Court has inferred therefrom that the provisions of the Charter and in particular Article 19 thereof are applicable to such a decision (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 53).
- 21 Those considerations also hold true for the present case, in which it is a question of an Austrian national being able to enter a Member State other than the one of which he is a national, in this case the Federal Republic of Germany, in order to give a presentation there, thereby exercising his right of free movement without risk of being extradited.
- 22 As regards the interpretation of Article 19(2) of the Charter, it should be borne in mind that it provides that no one may be removed, expelled or extradited to a 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.
- 23 This Court has held that where a Member State receives a request from a third State seeking the extradition of a national of another Member State, that first Member State must verify that the extradition will not prejudice the rights referred to in Article 19 of the Charter (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 60).
- 24 In that regard, in so far as the competent authority of the requested Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals in the requesting third State, it is bound to assess the existence of that risk when it is called upon to decide on the extradition of a person to that State, on the basis of information that is objective, reliable, specific and properly updated (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 58 and 59).

- 25 In the present case, the referring court states that the public prosecution service requested the death penalty in respect of Mr Adelsmayr in the proceedings involving him in the United Arab Emirates. It adds that he was sentenced in absentia to life imprisonment in interim proceedings which can be resumed at any time and that he is still liable to the death penalty should criminal proceedings against him be reopened following his extradition.
- 26 It follows that Mr Adelsmayr runs a ‘serious risk’ within the meaning of Article 19(2) of the Charter of being subjected to the death penalty in the event of extradition.
- 27 The answer to the second question, in so far as it concerns Article 19(2) of the Charter, is therefore that that provision must be interpreted as meaning that a request for extradition originating from a third country concerning a Union citizen who, in exercising his freedom of movement, leaves his Member State of origin in order to reside on the territory of another Member State, must be rejected by the latter Member State where that citizen runs a serious risk of being subjected to the death penalty in the event of extradition.
- 28 Given the answer to the second question, it is not necessary to examine that question in so far as it concerns Article 47 of the Charter, or the first, third and fourth questions.

Costs

- 29 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 (First Chamber), hereby rules:

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

[Signatures]