



## Reports of Cases

OPINION OF ADVOCATE GENERAL  
BOT  
delivered on 21 November 2017<sup>1</sup>

**Case C-191/16**

**Romano Pisciotti**

**v**

**Bundesrepublik Deutschland**

(Request for a preliminary ruling  
from the Landgericht Berlin (Regional Court, Berlin, Germany))

(Reference for a preliminary ruling — Citizenship of the Union — Articles 18 and 21 TFEU — EU-USA Agreement on Extradition — Constitutional provision of a Member State prohibiting the extradition of its own nationals to third States — Different treatment of nationals of other Member States — Action for a declaration that the extradition to the United States of a national of another Member State constitutes a manifest breach of EU law rendering the Member State concerned liable)

1. This request for a preliminary ruling asks the Court to interpret Articles 18 and 21 TFEU in the context of extradition and provides it with an opportunity to clarify the scope of its judgment of 6 September 2016, *Petruhhin*.<sup>2</sup>
2. The Court will thus have to give a ruling on whether, in circumstances such as those of the dispute in the main proceedings, Articles 18 and 21 TFEU must be interpreted as meaning that they preclude a Member State which has received from a third State, pursuant to an extradition agreement between the EU and that State, a request for the extradition of a Union citizen who is a national of another Member State and who has moved to the requested Member State, from granting that request. In the submissions that follow, I shall propose, on the basis of the lessons learned from the judgment of 6 September 2016, *Petruhhin*,<sup>3</sup> that the Court answer that question in the negative.

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

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

<sup>3</sup> C-182/15, EU:C:2016:630.

## I. Legal framework

### A. *EU law*

3. Article 10 of the Agreement on extradition between the European Union and the United States of America of 25 June 2003,<sup>4</sup> entitled 'Requests for extradition or surrender made by several States', provides:

'1. If the requested State receives requests from the requesting State and from any other State or States for the extradition of the same person, either for the same offence or for different offences, the executive authority of the requested State shall determine to which State, if any, it will surrender the person.

2. If a requested Member State receives an extradition request from the United States of America and a request for surrender pursuant to the European arrest warrant for the same person, either for the same offence or for different offences, the competent authority of the requested Member State shall determine to which State, if any, it will surrender the person. For this purpose, the competent authority shall be the requested Member State's executive authority if, under the bilateral extradition treaty in force between the United States and the Member State, decisions on competing requests are made by that authority; if not so provided in the bilateral extradition treaty, the competent authority shall be designated by the Member State concerned pursuant to Article 19.

3. In making its decision under paragraphs 1 and 2, the requested State shall consider all of the relevant factors, including, but not limited to, factors already set forth in the applicable extradition treaty, and, where not already so set forth, the following:

- (a) whether the requests were made pursuant to a treaty;
- (b) the places where each of the offences was committed;
- (c) the respective interests of the requesting States;
- (d) the seriousness of the offences;
- (e) the nationality of the victim;
- (f) the possibility of any subsequent extradition between the requesting States; and
- (g) the chronological order in which the requests were received from the requesting States'.

4. Article 17 of that Agreement, entitled 'Non-derogation', provides:

'1. This Agreement is without prejudice to the invocation by the requested State of grounds for refusal relating to a matter not governed by this Agreement that is available pursuant to a bilateral extradition treaty in force between a Member State and the United States of America.

2. Where the constitutional principles of, or final judicial decisions binding upon, the requested State may pose an impediment to fulfilment of its obligation to extradite, and resolution of the matter is not provided for in this Agreement or the applicable bilateral treaty, consultations shall take place between the requested and requesting States'.

<sup>4</sup> OJ 2003 L 181, p. 27, the 'EU-USA Agreement'.

## **B. German law**

### *1. The Basic Law*

5. Article 16(2) of the Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany) of 23 May 1949,<sup>5</sup> as last amended by Article 1 of the Law of 23 December 2014,<sup>6</sup> provides:

‘No German may be extradited to a foreign country. Statutory provision in derogation from the foregoing may be made for extradition to a Member State of the European Union or to an international court of justice, provided that the principles of the rule of law are observed’.

### *2. The IRG*

6. Paragraph 12 of the Gesetz über internationale Rechtshilfe in Strafsachen (Law on international mutual legal assistance in criminal matters) of 23 December 1982,<sup>7</sup> entitled ‘Grant of extradition’, provides:

‘Extradition may not be granted unless a court has declared it to be permissible’.

7. Paragraph 13(1) of the IRG, entitled ‘Jurisdiction *ratione materiae*’, provides:

‘1. Judicial decisions shall ... be delivered by the Oberlandesgericht (Higher Regional Court). Decisions of the Oberlandesgericht (Higher Regional Court) shall not be open to challenge’.

8. Paragraph 23 of the IRG, entitled ‘Decision on objections raised by the person sought’, provides:

‘Any objections raised by the person sought against the extradition arrest warrant or against its execution shall be adjudicated upon by the Oberlandesgericht (Higher Regional Court)’.

9. Paragraph 74(1) of the IRG provides:

‘Incoming requests for mutual legal assistance and the submission of requests for mutual legal assistance to other States shall be adjudicated upon by the Federal Ministry of Justice and Consumer Protection in agreement with the Ministry of Foreign Affairs and any other federal ministries within whose remit the legal assistance falls’.

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

10. Suspected since 2007 of having been engaging in concerted practices in the United States, Romano Piscioti, an Italian national, was the subject of a request for extradition for the purposes of prosecution made by the US authorities.

<sup>5</sup> BGBI. 1949, p. 1.

<sup>6</sup> BGBI. 2014 I, p. 2438, the ‘Basic Law’.

<sup>7</sup> BGBI. 1982 I, p. 2071, the ‘IRG’.

11. On 26 August 2010, an arrest warrant was issued against him by the US District Court for the Southern District of Florida in Fort Lauderdale and a bill of indictment was returned by the Grand Jury of the same court. Mr Piscioti was charged with having taken part in a working group of marine hose manufacturer sales representatives which had distorted competition by sharing out between themselves the market for the sale of marine hoses in Florida (United States) and elsewhere between 1999 and late 2006.
12. On 17 June 2013, as his flight from Nigeria to Italy made a stopover at Frankfurt am Main airport, Mr Piscioti was arrested by officers from the German federal police.
13. On 18 June 2013, Mr Piscioti was brought before the Amtsgericht Frankfurt am Main (District Court, Frankfurt am Main, Germany) for the hearing relating to the US request for his extradition. Mr Piscioti expressed his opposition to extradition by the simplified informal procedure.
14. On the basis of an order of the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main, Germany) of 24 June 2013, Mr Piscioti was provisionally detained pending extradition. On 7 August 2013, the United States of America sent a formal request for extradition to the Federal Republic of Germany.
15. On 16 August 2013, the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main) ordered that the provisional detention pending extradition be extended by way of a formal detention for the purposes of extradition.
16. By order of 22 January 2014, the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main) declared Mr Piscioti's extradition to be permissible.
17. On 6 February 2014, Mr Piscioti made an application to the Bundesverfassungsgericht (Federal Constitutional Court, Germany) for interim measures to prevent execution of the order of the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main) of 22 January 2014. The Bundesverfassungsgericht (Federal Constitutional Court) dismissed that application by order of 17 February 2014.
18. By letter of 26 February 2014, Mr Piscioti submitted to the Bundesministerium der Justiz (Federal Ministry of Justice, Germany) that his extradition would be contrary to EU law in that a literal application of Article 16(2), first sentence, of the Basic Law which is confined to German nationals would infringe the general prohibition on discrimination.
19. On 17 March 2014, the German Government granted Mr Piscioti's extradition, which took place on 3 April 2014.
20. On the same date of 17 March 2014, Mr Piscioti brought an action before the Landgericht Berlin (Regional Court, Berlin, Germany), the referring court, for a declaration that the Federal Republic of Germany was liable for having granted his extradition to the United States of America and an order requiring it to pay damages.
21. Having pleaded guilty in the criminal proceedings brought against him in the United States, Mr Piscioti was sentenced to a term of two years' imprisonment, reduced by the period of his 9 months and 16 days' detention in Germany, and fined USD 50 000 (approximately EUR 42 671). Mr Piscioti served his prison sentence in the United States until his release on 14 April 2015.
22. The referring court states that, according to the case-law of the Bundesverfassungsgericht (Federal Constitutional Court), the Federal Republic of Germany has an obligation under Article 1(3) and Article 20(3) of the Basic Law to conduct its own review of the legality of a grant of extradition and to honour any commitments it may have under international law. It goes on to say that the

Bundesverfassungsgericht (Federal Constitutional Court) has held, in particular in the case of Mr Piscioti, that the prohibition of discrimination on grounds of nationality referred to in Article 18 TFEU is not applicable to extradition to third States, inasmuch as such matters do not fall within the scope of EU law.

23. The referring court states that, unlike the Bundesverfassungsgericht (Federal Constitutional Court), it considers EU law to be applicable to the present case. It points out that Mr Piscioti exercised his right of free movement under Article 21(1) TFEU by stopping over in Frankfurt am Main during his flight from Nigeria to Italy. In its view, moreover, extradition to the United States may also fall within the scope of EU law by reason of the EU-USA agreement.

24. The referring court is uncertain whether Article 17(2) of that agreement might nonetheless be interpreted as introducing an exception to the application of EU law and as therefore being such as to justify discrimination based on nationality. It is inclined to think, however, that such a justification is not applicable, taking into account primary law.

25. In the event that there has been a breach of EU law, the referring court seeks to ascertain whether that breach is 'sufficiently serious' to give rise to a right to compensation. Relying on the judgment of 4 July 2000, *Haim*,<sup>8</sup> it states that it is minded to answer that question in the affirmative, on the ground that, in its view, the discretion available to the State was considerably reduced if not non-existent. In one respect, however, it is uncertain, in so far as the State's decision to extradite was preceded by a judicial review of the admissibility of the extradition. Now, since the State's liability here derives from an error committed by a court, it follows from the judgment of 30 September 2003, *Köbler*,<sup>9</sup> that a 'manifest' breach is required. Moreover, there was no relevant Court of Justice case-law when the Federal Republic of Germany made its decision and the latter relied on the judgments of the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main) and the Bundesverfassungsgericht (Federal Constitutional Court), according to which Mr Piscioti's extradition did not fall within the scope of EU law.

26. In those circumstances, the Landgericht Berlin (Regional Court Berlin) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

- '(1) (a) Is extradition between a Member State and a third country a matter which, irrespective of the facts of the individual case, never comes within the material scope of the Treaties, with the result that the EU-law prohibition of discrimination under the first paragraph of Article 18 TFEU is not to be taken into account in the application of a (literally interpreted) rule of constitutional law (in this case, the first sentence of Article 16(2) of the German Basic Law) which prohibits extradition only of that Member State's own nationals to third countries?
- (b) If that question is answered in the affirmative: is the first question to be answered differently if the matter of extradition between a Member State and the United States of America is based on the Agreement on extradition between the European Union and the United States of America?
2. In so far as the applicability of the Treaties with regard to extradition between Member States and the United States of America is not excluded from the outset:

Is the first paragraph of Article 18 TFEU and the case-law of the Court of Justice relating to that provision to be interpreted as meaning that a Member State unjustifiably breaches the prohibition of discrimination under the first paragraph of Article 18 TFEU in the case where, on the basis of a

<sup>8</sup> C-424/97, EU:C:2000:357.

<sup>9</sup> C-224/01, EU:C:2003:513.

constitutional law (the first sentence of Article 16(2) of the Basic Law), it treats, in the matter of requests for extradition received from third countries, its own nationals and nationals of other EU Member States differently inasmuch as it extradites only the latter?

3. Should such cases be found to fall foul of the general prohibition of discrimination laid down in the first paragraph of Article 18 TFEU:

Is the case-law of the Court of Justice to be interpreted as meaning that, in a case such as the present — in which, for extradition to be authorised by the competent authority, there must mandatorily be a prior judicial review of its legality, the result of which, however, binds the authority only if that extradition is declared to be impermissible — a mere breach of the prohibition of discrimination under the first paragraph of Article 18 TFEU may itself constitute a serious breach, or must the breach be manifest?

4. If a manifest breach is not required:

Is the case-law of the Court of Justice to be interpreted as meaning that there is a priori no sufficiently serious breach in a case such as that in the main proceedings, in which, in the absence of case-law of the Court of Justice with regard to the particular type of factual situation at issue (namely, the objective applicability of the general prohibition of discrimination under the first paragraph of Article 18 TFEU to matters relating to extradition between Member States and the United States of America), the highest national executive authority can, in support of its decision, point to the fact that its decision is in line with previous decisions of national courts in the same matter?

### III. My analysis

27. It should be noted that, since Mr Piscioti's extradition by the Federal Republic of Germany to the United States of America has already taken place, his position in the dispute in the main proceedings is as someone seeking to establish the liability of that Member State for a breach of EU law.

28. It is settled case-law that the principle of the non-contractual liability of a State for damage caused to individuals by breaches of EU law for which the State can be held responsible is inherent in the EU legal order. The Court has held that individuals harmed have a right to compensation on the basis of that liability where three conditions are met, namely that the rule of EU law infringed is intended to confer rights on them, that the breach of that rule is sufficiently serious, and that there is a direct causal link between the breach and the damage sustained by the individuals.<sup>10</sup>

29. The prerequisite for any attempt to establish the liability of a Member State is, of course, the existence of a breach of EU law by that State. In this instance, it must therefore be determined whether Mr Piscioti's extradition by the Federal Republic of Germany to the United States constitutes such a breach of EU law.

30. Mr Piscioti submits in this regard that the national rule, contained in Article 16(2) of the Basic Law, to the effect that the Federal Republic of Germany must not extradite its own nationals, precluded that Member State from extraditing him by reason of the principle of non-discrimination on grounds of nationality.

31. It must therefore be examined whether Articles 18 and 21 TFEU are to be interpreted as meaning that the nationals of a Member State other than the requested Member State must also benefit from the rule prohibiting the extradition by that Member State of its own nationals.

<sup>10</sup> See, inter alia, judgment of 15 November 2016, *Ullens de Schooten* (C-268/15, EU:C:2016:874, paragraph 41 and the case-law cited).

32. The Court seems to have largely answered that question in its judgment of 6 September 2016, *Petruhhin*,<sup>11</sup> in the context of the application of an extradition agreement concluded between a Member State and a third State.

33. This time, the request for a preliminary ruling has arisen within the context of an extradition agreement concluded between the EU and a third State, in this case the United States of America.

34. I would observe that the EU-USA agreement does not contain any rule under which extradition may or, conversely, must not be refused on the ground that the extradition request concerns a national of the requested State. More broadly, as the European Commission rightly points out in its observations, that agreement does not contain any rule on the extradition of domestic nationals or nationals of other Member States from the requested State to the requesting third State. Article 17 of the EU-USA agreement leaves it open to the States parties to that agreement to rely on grounds for refusal based, in particular, on a bilateral extradition treaty or on the constitutional principles of the requested State. The existence of the EU-USA agreement does not therefore have the effect of entirely divesting the Member States of their competence in this field.

35. A Member State such as the Federal Republic of Germany is therefore acting entirely within its competence in laying down, in its constitutional law, the rule that it will not extradite its own nationals. Such a rule is also contained in Article 7 of the *Auslieferungsvertrag zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika* (Extradition Treaty between the Federal Republic of Germany and the United States of America) of 20 June 1978.<sup>12</sup>

36. However, as the Court held in its judgment of 6 September 2016, *Petruhhin*,<sup>13</sup> in situations covered by EU law, the national rules concerned must have due regard to the latter.<sup>14</sup>

37. In particular, by prohibiting ‘any discrimination on grounds of nationality’, Article 18 TFEU requires that persons in a situation falling within the scope of application of the Treaties be treated equally.<sup>15</sup>

38. There is no doubt that the situation at issue in the dispute in the main proceedings falls within the scope of the Treaties within the meaning of Article 18 TFEU, for two reasons.

39. First, the request for Mr Piscioti’s extradition was made by the United States of America to the Federal Republic of Germany pursuant to the EU-USA extradition agreement, following its entry into force. That request therefore falls squarely within the scope of an act governed by EU law.

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

<sup>12</sup> BGBl. 1980 II, p. 646. Article 7(1) and (3) of the Treaty provides:

‘1. Neither of the Contracting Parties shall be bound to extradite its own nationals ...

...

3. If the Requested State does not extradite its own national, it shall, at the request of the Requesting State, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate’.

<sup>13</sup> C-182/15, EU:C:2016:630.

<sup>14</sup> See paragraph 27 of that judgment and the case-law cited.

<sup>15</sup> See paragraph 29 of that judgment and the case-law cited.

40. Secondly, the Court held, in its judgment of 6 September 2016, *Petruhhin*,<sup>16</sup> that, in a situation where the rules on extradition fall within the competence of the Member States, it is necessary, in order to determine the scope of application of the Treaties within the meaning of Article 18 TFEU, to read that article in conjunction with the provisions of the FEU Treaty on citizenship of the Union. The situations falling within their scope of application include, therefore, 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>17</sup>

41. In the case in the main proceedings, Mr Piscioti, an Italian national, availed himself, as a Union citizen, of his right to move freely within the European Union by travelling to Germany, with the result that the situation at issue in the main proceedings falls within the scope of application of the Treaties within the meaning of Article 18 TFEU, which sets out the principle of non-discrimination on grounds of nationality.<sup>18</sup>

42. It follows from the foregoing that, in so far as Mr Piscioti's situation is governed by EU law, the requested Member State was required, when processing the request for his extradition made by the United States of America, to respect the principle of non-discrimination on grounds of nationality laid down in Article 18 TFEU.

43. It is to be noted in this regard, by analogy with the Court's findings in its judgment of 6 September 2016, *Petruhhin*,<sup>19</sup> that national rules on extradition such as those at issue in the main proceedings give rise to a difference in treatment depending on whether the person concerned is a national of the Member State in question or a national of another Member State, in that they result in nationals of other Member States, such as Mr Piscioti, not being granted the protection against extradition enjoyed by nationals of the Member State in question. In so doing, such rules are liable to affect the freedom of nationals of other Member States to move within the European Union.<sup>20</sup>

44. It follows, according to the Court, 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 another Member State, such as Mr Piscioti, gives rise to a restriction of freedom of movement, within the meaning of Article 21 TFEU.<sup>21</sup> 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.<sup>22</sup>

45. In its judgment of 6 September 2016, *Petruhhin*,<sup>23</sup> the Court took into account the justification of preventing the risk of impunity.<sup>24</sup> It recalled in that regard that, under Article 3(2) TEU, the European Union offers its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls and the prevention and combating of crime.<sup>25</sup> According to the Court, the objective of preventing the risk of impunity for persons who have committed an offence is to be seen in that context and must be considered a legitimate objective in EU law.<sup>26</sup>

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

17 See paragraph 30 of that judgment and the case-law cited.

18 See, by analogy, judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraph 31 and the case-law cited). See also order of 6 September 2017, *Peter Schotthöfer & Florian Steiner* (C-473/15, EU:C:2017:633, paragraph 19 and the case-law cited).

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

20 See paragraph 32 of that judgment.

21 See paragraph 33 of the judgment.

22 See paragraph 34 of the same judgment and the case-law cited.

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

24 See paragraph 35 of that judgment.

25 See paragraph 36 of the judgment.

26 See paragraph 37 of the same judgment and the case-law cited.



46. However, as the Court noted in its judgment of 6 September 2016, *Petruhhin*,<sup>27</sup> 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>28</sup>

47. In circumstances such as those in the dispute in the main proceedings, and in the light of the evidence submitted to the Court, I take the view that there was no alternative measure to extradition which was less prejudicial to the exercise of the rights conferred by Article 21 TFEU and which would have made it possible to attain equally effectively the objective of preventing the risk of impunity of a person such as Mr Piscioti, who was suspected of having committed a criminal offence at the time when the Federal Republic of Germany received the request for his extradition from the United States of America.

48. For, on the one hand, it follows from the explanations which the German Government gave to the Court at the hearing that, contrary to what Mr Piscioti's counsel submitted in his observations, Paragraph 7(2) of the Strafgesetzbuch (Criminal Code)<sup>29</sup> did not allow Mr Piscioti to be prosecuted in the Federal Republic of Germany for offences allegedly committed in a third State. One of the conditions which that Paragraph attaches to the exercise of such subsidiary criminal jurisdiction, namely that the extradition requested cannot be implemented, was not fulfilled. It is for the referring court to verify whether the interpretation of that Paragraph as presented by the German Government in these proceedings is correct.

49. On the other hand, the Court held, in its judgment of 6 September 2016, *Petruhhin*,<sup>30</sup> that Article 18 TFEU and Article 21 TFEU must be interpreted as meaning that, when a Member State to which a Union citizen, 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>31</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>32</sup>

50. I would point out that the obligation requiring the requested Member State to inform the Member State of which the Union citizen is a national was established by the Court in a situation, expressly highlighted by the Court,<sup>33</sup> where there was no extradition agreement between the EU and the third State in question in that case.

51. It is also worth noting that several Member States which have submitted observations in these proceedings have emphasised the legal and practical difficulties associated with the approach adopted by the Court in paragraph 50 of its judgment of 6 September 2016, *Petruhhin*.<sup>34</sup> The point has been made in particular that, in most cases, the Member State of which the Union citizen forming the

<sup>27</sup> C-182/15, EU:C:2016:630.

<sup>28</sup> See paragraph 38 of that judgment and the case-law cited.

<sup>29</sup> BGB1. 1998 I, p. 3322. It is clear from that article that, in the case of an offence committed abroad, German criminal law is applicable where the offence is punishable under criminal law in the State where it was committed, or where the place where the offence was committed does not fall under any territorial jurisdiction, and where, at the time of the offence, the perpetrator was a foreign national, was apprehended in national territory and, although extraditable under extradition law for the type of offence concerned, is not extradited because an extradition request is not made within a reasonable period, or is rejected or extradition itself cannot be implemented.

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

<sup>31</sup> OJ 2002 L 190, p. 1.

<sup>32</sup> See paragraph 50 of that judgment.

<sup>33</sup> See paragraphs 46 and 47 of that judgment.

<sup>34</sup> C-182/15, EU:C:2016:630.

subject of an extradition request is a national is unlikely to be in possession of the information that would enable it to issue a European arrest warrant with a view to prosecution and then to prosecute the person surrendered. In that event, the objective of preventing the risk of impunity would be jeopardised. It is also contended that both Article 16(3) of Framework Decision 2002/584 and, in this instance, Article 10(2) and (3) of the EU-USA agreement run counter to the idea that a European arrest warrant should always be given priority over an extradition request.

52. To the extent that the Court wishes to confirm that the requested Member State has an obligation to inform the Member State of which the Union citizen is a national when applying an extradition agreement such as that between the EU and the United States of America, I would observe, as the German Government did in its written observations and at the hearing, that the Italian Republic, of which the applicant is a national, was kept informed by the German authorities. Thus, the federal police headquarters at Frankfurt am Main airport informed the Italian Consulate-General that it had arrested Mr Piscioti and detained him in custody at the local police station. The report sent [to the Consulate-General] contained, in particular, information on the international arrest warrant on the basis of which the arrest had been made. The Italian Consulate-General was provided with additional information following Mr Piscioti's appearance in court on 18 June 2013. Those communications were followed by further consultations between the Italian Consulate-General in Frankfurt am Main and the Ministry of Justice of the *Land* of Hesse. The Ministry of Justice of the *Land* of Hesse thus informed the Italian Consulate-General that the objections raised by Mr Piscioti had been exhaustively examined in the order of the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main) of 22 January 2014 and then dismissed, and that the Bundesverfassungsgericht (Federal Constitutional Court) had turned down the request for interim measures after examining the objections raised by Mr Piscioti.

53. It is clear from the foregoing that the Italian Republic was informed of the extradition request made by the US authorities and that it did not issue a European arrest warrant between the time of Mr Piscioti's arrest and the time of his extradition to the United States.<sup>35</sup>

54. Even assuming, therefore, that the Federal Republic of Germany had an obligation to provide information in the manner established by the Court in its judgment of 6 September 2016, *Petruhhin*,<sup>36</sup> the fact remains that that Member State cannot be accused of having infringed EU law by deciding to extradite Mr Piscioti to the United States. Given that that Member State cannot therefore be held liable for infringing EU law, there is no need to examine the referring court's questions with respect to whether there has been a sufficiently serious infringement.

55. In conclusion to the foregoing submissions, I propose that the answer to be given to the referring court should be that, in circumstances such as those of the dispute in the main proceedings, Articles 18 and 23 TFEU must be interpreted as meaning that they do not preclude a Member State which has received from a third State, pursuant to an extradition agreement between the EU and that State, a request for the extradition of a Union citizen who is a national of another Member State and who has moved to the requested Member State, from granting that request.

<sup>35</sup> The explanation for the fact that the Italian Republic did not issue a European arrest warrant, particularly in the light of the comments made in this regard by the Federal Republic of Germany at the hearing, may be that the offence of which Mr Piscioti was accused was not punishable under criminal law in Italy and, in any event, that, since the conduct in question had no connection with that Member State, it would have been very difficult to pursue a criminal prosecution in that State.

<sup>36</sup> C-182/15, EU:C:2016:630.

#### **IV. Conclusion**

56. In the light of all the foregoing considerations, I propose that the questions referred for a preliminary ruling by the Landgericht Berlin (Regional Court, Berlin, Germany) be answered as follows:

In circumstances such as those of the dispute in the main proceedings, Articles 18 and 21 TFEU must be interpreted as meaning that they do not preclude a Member State which has received from a third State, pursuant to an extradition agreement between the European Union and that State, a request for the extradition of a Union citizen who is a national of another Member State and who has moved to the requested Member State, from granting that request.