Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

6 September 2016*

(Reference for a preliminary ruling — Citizenship of the Union — Extradition to a third State of a national of a Member State who has exercised his right to freedom of movement — Scope of EU law — Protection of a Member State's nationals against extradition — No protection for nationals of the other Member States — Restriction of freedom of movement — Justification based on the prevention of impunity — Proportionality — Verification of the guarantees provided for in Article 19 of the Charter of Fundamental Rights of the European Union)

In Case C-182/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Supreme Court, Latvia), made by decision of 26 March 2015, received at the Court on 22 April 2015, in the proceedings relating to the extradition of

Aleksei Petruhhin

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, A. Arabadjiev, C. Toader and F. Biltgen, Presidents of Chambers, E. Levits, J.-C. Bonichot, M. Safjan, 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 1 March 2016,

after considering the observations submitted on behalf of:

— the Latvian Government, by I. Kalniņš, acting as Agent,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the German Government, by T. Henze, J. Möller, M. Hellmann and J. Kemper, acting as Agents,

— Ireland, by E. Creedon, L. Williams and T. Joyce, acting as Agents, C. Toland, Barrister-at-Law, and D. Kelly, Advisory Counsel,

— the French Government, by G. de Bergues, D. Colas and F.-X. Bréchot, acting as Agents,

— the Austrian Government, by G. Eberhard, acting as Agent,

* Language of the case: Latvian.

— the Polish Government, by B. Majczyna, acting as Agent,

— the United Kingdom Government, by V. Kaye, acting as Agent, and J. Holmes, Barrister,

— the European Commission, by S. Grünheid, E. Kalniņš and W. Bogensberger, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 May 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the first paragraph of Article 18 TFEU, Article 21(1) TFEU and Article 19 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in the context of an extradition request issued by the Russian authorities to the Latvian authorities in relation to Mr Aleksei Petruhhin, an Estonian national, in connection with a drug-trafficking offence.

Legal context

EU law

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) ('Framework Decision 2002/584'), provides in Article 1(1) and (2):

'1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.'

Latvian law

4 The Latvian Constitution provides in the third sentence of Article 98:

'A citizen of Latvia may not be extradited to a foreign country, except in the cases provided for in international agreements ratified by the Saeima (Latvian Parliament) if by the extradition the basic human rights specified in the Constitution are not violated.'

5 Chapter 66 of the Code of Criminal Procedure is entitled 'Extradition of a person to a foreign State'. It includes Article 696, paragraphs 1 and 2 of which provide:

'(1) A person who is present in the territory of the Republic of Latvia may be extradited for the purpose of criminal proceedings, trial, or the execution of a judgment, if a request has been received from a foreign State for the temporary detention or the extradition of that person and the facts are characterised as a criminal offence under Latvian law and the law of the foreign State.

(2) A person may be extradited for the purpose of criminal proceedings or trial in respect of an offence the commission of which is punished by imprisonment for a maximum term of not less than one year or by a more severe penalty, unless an international treaty provides otherwise.'

6 Article 697(2)(1), (2) and (7) of that code is worded as follows:

'Extradition shall not be granted if:

(1) the person concerned is a Latvian citizen;

(2) the request for the extradition of the person concerned has been made with the aim of commencing criminal proceedings against him or punishing him on the ground of race, religious beliefs, nationality or political views, or if there are sufficient grounds for believing that his rights may be infringed on the abovementioned grounds;

...

(7) the person concerned may be tortured in the foreign State.'

7 The Agreement of 3 February 1993 between the Republic of Latvia and the Russian Federation on Judicial Assistance and Judicial Relations in Civil, Family and Criminal Matters provides, in Article 1:

'1. The personal and economic rights of the nationals of one of the Contracting Parties present in the territory of the other Contracting Party shall enjoy in that territory the same legal protection as [the rights of] the nationals of the other Contracting Party.

2. The nationals of one of the Contracting Parties shall be entitled to access freely and without hindrance the courts, the office of the Public Prosecutor and notarial offices … and other institutions of the other Contracting Party with competence for civil, family and criminal matters, they may bring proceedings, submit requests, lodge appeals and carry out other procedural acts before those bodies on the same terms as nationals of that other Contracting Party.'

8 Article 62 of that agreement provides:

'Extradition shall not be granted if … the person whose extradition is requested is a national of the Contracting Party to which the request is addressed or if he has obtained refugee status in that State'.

9 The Agreement of 11 November 1992 between the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania on Judicial Assistance and Judicial Relations provides in Article 1(1):

'The personal and economic rights of the nationals of one of the Contracting Parties present in the territory of the other Contracting Party shall enjoy in that territory the same legal protection as [the rights of] the nationals of the other Contracting Party.'

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

10 Mr Petruhhin, an Estonian national, was made the subject of a priority Red Notice on Interpol's website on 22 July 2010.

11 He was arrested on 30 September 2014 in the town of Bauska (Latvia), then placed in provisional custody on 3 October 2014.

12 On 21 October 2014, the Latvian authorities received an extradition request from the Office of the Prosecutor-General of the Russian Federation. That request stated that criminal proceedings were initiated against Mr Petruhhin following a decision of 9 February 2009 and that he had to be placed in custody. Mr Petruhhin was accused of attempted large-scale, organised drug-trafficking. Under Russian law, that offence is punishable with a term of imprisonment of between 8 and 20 years.

13 The Latvijas Republikas Ģenerālprokuratūra (Public Prosecutor's Office of the Republic of Latvia) authorised Mr Petruhhin's extradition to Russia.

14 However, on 4 December 2014 Mr Petruhhin filed an appeal against the extradition decision, on the ground that, under Article 1 of the treaty between the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania on judicial assistance and judicial relations, he enjoyed the same rights in Latvia as a Latvian national and that, consequently, the Latvian State was required to protect him against unjustified extradition.

15 The referring court observes that neither Latvian national law nor any of the international agreements signed by the Republic of Latvia with, in particular, the Russian Federation or the other Baltic countries restrict the extradition of an Estonian national to Russia. Under those international agreements, protection against such extradition is conferred only on Latvian nationals.

16 However, according to the referring court, the lack of protection of Union citizens against extradition, when they have moved to a Member State other than the one of which they are nationals, is contrary to the essence of citizenship of the Union, that is to say, the right of Union citizens to protection equivalent to that of a Member State's own nationals.

17 In those circumstances, on 26 March 2015 the Augstākā tiesa (Supreme Court, Latvia) annulled the decision to detain Mr Petruhhin and decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are the first paragraph of Article 18 TFEU and Article 21(1) TFEU to be interpreted as meaning that, in the event of extradition of a citizen of any Member State of the European Union to a non-Member State under an extradition agreement concluded between a Member State and a third country, the same level of protection must be guaranteed as is guaranteed to a citizen of the Member State in question?

(2) In those circumstances, must the court of the Member State to which the request for extradition has been made apply the conditions for extradition of the Member State of which the person concerned is a citizen or that in which he has his habitual residence?

(3) In cases in which extradition must be carried out without taking into consideration the specific level of protection established for the citizens of the State to which the request for extradition has been made, must the Member State to which the request for extradition has been made verify compliance with the safeguards established in Article 19 of the Charter, that is, that no one may be 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? May such verification be limited to checking that the State requesting extradition is a party to the Convention against Torture or is it necessary to check the factual situation by taking into consideration the evaluation of that State carried out by the bodies of the Council of Europe?'

Consideration of the questions referred

The admissibility of the questions referred for a preliminary ruling

18 According to settled case-law, the procedure provided for by Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them (see, in particular, judgment of 6 October 2015 in *Capoda Import-Export*, C-354/14, EU:C:2015:658, paragraph 23 and the case-law cited).

19 In the context of that cooperation, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (see, in particular, judgment of 6 October 2015 in *Capoda Import-Export*, C-354/14, EU:C:2015:658, paragraph 24 and the case-law cited).

20 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, in particular, judgment of 6 October 2015 in *Capoda Import-Export*, C-354/14, EU:C:2015:658, paragraph 25 and the case-law cited).

21 In the present case, the Latvian Government informed the Court at the hearing that, following his release on 26 March 2015, Mr Petruhhin had left Latvia, probably in order to re-enter Estonia.

22 The Latvian Government added, however, that the extradition proceedings were still pending before the Latvian courts. It stated that the Public Prosecutor's Office of the Republic of Latvia had not withdrawn its decision authorising Mr Petruhhin's extradition and that that decision remained subject to review by the Augstākā tiesa (Supreme Court). It was for that court to accept or refuse the extradition, or to request further inquiry before adjudicating.

23 It is clear from that information that, even if Mr Petruhhin is no longer in Latvia, it is still necessary for the referring court to rule on the lawfulness of the extradition decision, since, if it is not annulled by the referring court, it may be executed at any time, if necessary, following Mr Petruhhin's arrest on Latvian territory. It is not, therefore, apparent that the questions raised, which seek to determine whether national rules on the basis of which such an extradition decision has been adopted are consistent with EU law, are devoid of interest in order to decide the dispute in the main proceedings.

24 In those circumstances, the questions referred must be held to be admissible.

The first and second questions

25 By its first two questions, which should be examined together, the referring court asks, in essence, whether Article 18 TFEU and Article 21 TFEU must be interpreted as meaning that, for the purposes of applying an extradition agreement concluded between a Member State and a third State, nationals of another Member State must benefit from the rule which prohibits the extradition by the first Member State of its own nationals.

26 In that regard, it is true, as the majority of the Member States which have submitted observations to the Court have argued, that, in the absence of an international agreement between the European Union and the third country concerned, the rules on extradition fall within the competence of the Member States.

27 Nonetheless, in situations covered by EU law, the national rules concerned must have due regard to the latter (see judgment of 2 March 2010 in *Rottmann*, C-135/08, EU:C:2010:104, paragraph 41 and the case-law cited).

28 By its first two questions, the referring court seeks specifically to ascertain whether national rules on extradition such as those at issue in the main proceedings are compatible with Article 18 TFEU and Article 21 TFEU.

29 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 (see, to that effect, judgment of 2 February 1989 in *Cowan*, 186/87, EU:C:1989:47, paragraph 10).

30 In the present case, although, as has been stated in paragraph 26 above, the rules on extradition fall within the competence of the Member States where there is no international agreement between the European Union and the third country concerned, it must, however, be recalled that, in order to determine the scope of application of the Treaties within the meaning of Article 18 TFEU, that article must be read 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 (see, to that effect, judgment of 15 March 2005 in *Bidar*, C-209/03, EU:C:2005:169, paragraphs 31 to 33 and the case-law cited).

31 In the main proceedings, Mr Petruhhin, an Estonian national, made use, in his capacity as a Union citizen, of his right to move freely within the European Union by moving to Latvia, so 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 (see, to that effect, judgment of 2 February 1989 in *Cowan*, 186/87, EU:C:1989:47, paragraphs 17 to 19).

32 However, 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 Petruhhin, 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.

33 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 another Member State, such as Mr Petruhhin, gives rise to a restriction of freedom of movement, within the meaning of Article 21 TFEU.

34 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 (see, in particular, judgment of 12 May 2011 in *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 83 and the case-law cited).

35 Several governments which have submitted observations to the Court put forward as a justification that the measure providing for the extradition was adopted in the context of international criminal cooperation, in accordance with an extradition agreement, and seeks to prevent the risk of impunity.

36 In that respect, it must be noted 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.

37 The objective of preventing the risk of impunity for persons who have committed an offence is to be seen in that context (see, to that effect, judgment of 27 May 2014 in *Spasic*, C-129/14 PPU, EU:C:2014:586, paragraphs 63 and 65) and, as the Advocate General has observed in point 55 of his Opinion, must be considered a legitimate objective in EU law.

38 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 (see judgment of 12 May 2011 in *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 88 and the case-law cited).

39 As the Advocate General has observed in point 56 of his Opinion, extradition is a procedure whose aim 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. As several national governments have noted in their observations to the Court, although, in the light of the maxim '*aut dedere, aut judicare*' (either extradite or prosecute), 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, 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. Extradition thus allows offences committed in the territory of a State by persons who have fled that territory not to remain unpunished.

40 In that context, national rules, such as those at issue in the main proceedings, which allow an extradition request to be granted for the purposes of prosecution and judgment in the third State where the offence is alleged to have been committed appear appropriate to achieve the objective pursued.

41 It must, however, be ascertained whether there is an alternative measure less prejudicial to the exercise of the rights conferred by Article 21 TFEU which would be equally effective in achieving the objective of preventing the risk of impunity for a person alleged to have committed a criminal offence.

42 In that regard, it should be noted that, in accordance with the principle of sincere cooperation set out in the first subparagraph of Article 4(3) TEU, the European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties.

43 In the criminal law context, the EU legislature has, inter alia, adopted Framework Decision 2002/584 which seeks to facilitate judicial cooperation by introducing the European arrest warrant. That warrant is the first concrete measure in the field of criminal law implementing the principle of mutual recognition, which the European Council has referred to as the 'cornerstone' of judicial cooperation (judgment of 1 December 2008 in *Leymann and Pustovarov*, C-388/08 PPU, EU:C:2008:669, paragraph 49). In addition to that judicial cooperation mechanism which the European arrest warrant constitutes, there are also numerous instruments of mutual assistance intended to facilitate such cooperation (see, to that effect, judgment of 27 May 2014 in *Spasic*, C-129/14 PPU, EU:C:2014:586, paragraphs 65 to 68).

44 Furthermore, in its relations with the wider world, the European Union is to uphold and promote its values and interests and contribute to the protection of its citizens, in accordance with Article 3(5) TEU.

45 That protection is being built up gradually by means of cooperation instruments such as extradition agreements concluded between the European Union and third countries.

46 However, at present, such an agreement does not exist between the European Union and the third country at issue in the main proceedings.

47 In the absence of rules of EU law governing extradition between the Member States and a third State, it is necessary, in order to safeguard EU nationals from measures liable to deprive them of the rights of free movement and residence provided for in Article 21 TFEU, while combatting impunity in respect of criminal offences, to apply all the cooperation and mutual assistance mechanisms provided for in the criminal field under EU law.

48 Consequently, in a case such as that at issue in the main proceedings, the exchange of information with the Member State of which the person concerned is a national must be given priority in order to afford the authorities of that Member State, in so far as they have jurisdiction, pursuant to their national law, to prosecute that person for offences committed outside national territory, the opportunity to issue a European arrest warrant for the purposes of prosecution. Article 1(1) and (2) of Framework Decision 2002/584 does not preclude, in such a case, the possibility for the Member State of which the alleged offender is a national of issuing a European arrest warrant with a view to the surrender of that person for the purposes of prosecution.

49 In cooperating accordingly with the Member State of which the person concerned is a national and giving priority to that potential arrest warrant over the extradition request, the host 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 the offence prosecuted will remain unpunished.

50 The answer to the first two questions is, therefore, 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 Framework Decision 2002/584, provided that that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory.

The third question

51 By its third question, the referring court asks in essence whether, where the requested Member State intends to extradite a national of another Member State at the request of a third State, that first Member State must verify that the extradition will not prejudice the rights referred to in Article 19 of the Charter and, as the case may be, which criteria must be taken into account for the purposes of that verification.

52 As is apparent from the answer to the first two questions, the decision of a Member State to extradite a Union citizen, in a situation such as that of the main proceedings, comes within the scope of Article 18 TFEU and Article 21 TFEU and, therefore, of EU law for the purposes of Article 51(1) of the Charter (see, to that effect, by analogy, judgment of 26 February 2013 in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraphs 25 to 27).

53 It follows that the provisions of the Charter and in particular Article 19 thereof are applicable to such a decision.

54 Under Article 19 of the Charter, 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.

55 In order to assess whether that provision has been infringed, the referring court asks, in particular, whether a Member State may simply check that the requesting State is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, which prohibits torture, or whether the situation which obtains in that State must be specifically examined taking into account the Council of Europe's assessment of it.

56 In that regard, reference must be made to Article 4 of the Charter which prohibits inhuman or degrading treatment or punishment and it should be noted that that prohibition is absolute in that it is closely linked to respect for human dignity, the subject of Article 1 of the Charter (see judgment of 5 April 2016 in *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 85).

57 The existence of declarations and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (judgment of the European Court of Human Rights ('ECtHR') of 28 February 2008 in *Saadi v. Italy*, CE:ECHR:2008:0228JUD003720106, § 147).

58 It follows that, 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 (see, to that effect, as regards Article 4 of the Charter, judgment of 5 April 2016 in *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 88).

59 To that end, the competent authority of the requested Member State must rely on information that is objective, reliable, specific and properly updated. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the requesting third State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the United Nations (see, to that effect, judgment of 5 April 2016 in *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 89).

60 The answer to the third question is, therefore, 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.

Costs

61 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:

1. **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, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, provided that that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory.

2. **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 of Fundamental Rights of the European Union.**

[Signatures]