

# CJEU Clarifies Possible Extradition of Union Citizen to Third Country for Purpose of Serving Custodial Sentence

## News

**Thomas Wahl**

On 22 December 2022, the CJEU clarified its case-law on the extradition of Union citizens to a third state for the purpose of enforcing a custodial sentence.

The reference for a preliminary ruling by the Higher Regional Court of Munich concerned the extradition of a Croatian citizen to Bosnia and Herzegovina under the European Convention on Extradition (*Case C-237/21, S.M./Generalstaatsanwaltschaft München*). The question here was whether extradition constituted inadmissible unequal treatment on grounds of nationality, since the Basic Law of Germany prohibits the extradition of German nationals. It had to be clarified whether it follows from the previous CJEU case-law in *Raugevicius* (*Case C-247/17* → [eucrim 4/2018, 203-204](#)) that the protection against extradition must also apply to Union citizens other than its own nationals if the requested EU Member State (here: Germany) is obliged to extradite under the European Convention on Extradition, since it has defined the term “nationals” under Art. 6 No. 1 b) of the Convention in such a way that only its own nationals are covered by it and are thus not extradited.

The judges in Luxembourg now ruled that the requested Member State must actively seek the third state’s consent to serve the prison sentence in the requested Member State if this is possible under its national law. Should the consent not be obtained, Art. 18 and 21 TFEU would not prevent the extradition of the Union citizen pursuant to an international convention. Extradition would be justified in such circumstances because the individual concerned should not remain unpunished. It must, however, be ensured that extradition would not impair the fundamental rights of the Charter of the European Union, in particular under its Art. 19.

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