

# CJEU: Obligations of MS if Extradition Sought to Enforce Custodial Sentence for Union Citizens

## News

Thomas Wahl

On 6 September 2016, the CJEU rendered an important judgment in the “*Petruhhin*” case, giving guidance on whether the extradition of Union citizens from an EU country to non-EU countries is in line with the Union’s prohibition of discrimination (see [euCRIM 3/2016, p. 131](#)). This decision triggered several follow-up references for preliminary rulings, e.g., the “*Pisciotti*” case ([euCRIM 1/2018, p. 29](#)) and the “*Adelsmayr*” case ([euCRIM 3/2017, pp. 116-117](#)).

Another reference was brought to Luxembourg by the *Korkein oikeus* (Finnish Supreme Court), which essentially wanted to know whether (and, if yes, how) the concept established in *Petruhhin* not only applies to extraditions for the purpose of prosecution but also to those for the purpose of enforcing custodial sentences. The Grand Chamber of the CJEU delivered its judgment in this case ([C-247/17 – Denis Raugevicius](#)) on 13 November 2018.

### **Facts of the Case and Questions Referred**

In the case at issue, the Russian authorities requested extradition of Mr. Denis Raugevicius, a Lithuanian and Russian national, from Finland for the purpose of enforcing a custodial sentence of four years’ imprisonment for drug possession. Mr. Raugevicius challenged his extradition, arguing that he had lived in Finland for a considerable length of time and that he is the father of two children residing in Finland and having the Finnish nationality. The *Korkein oikeus* was unsure whether the CJEU’s *Petruhhin* judgment posed legal barriers to extradition. On the one hand, Finnish law prohibits the extradition of own nationals to countries outside the EU, but not of citizens having the nationality of another EU Member State (here: Lithuania). On the other hand, international agreements and Finnish law make provision for the possibility that a custodial sentence imposed by a third country on a Finnish national may be served on Finnish territory.

Therefore, the Finnish court, in essence, posed the question of whether Union law also requires extradition alternatives to be applied to Union citizens, so that the effects are less prejudicial to the exercise of the right to free movement.

### **The CJEU’s Answer**

#### AUTHOR

Thomas Wahl

Senior Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

---

Published in  
2018, Vol. 13(4) [euCRIM](#) pp 203  
– 204

ISSN: 1862-6947  
<https://euCRIM.eu>

---



First, the CJEU posits its main findings in the *Petruhhin* judgment:

- A national of an EU Member State (here: Lithuania) who moved to another EU Member State (here: Finland) exercised his right to free movement; therefore this situation falls within the scope of Art. 18 TFEU, which lays down the principle of non-discrimination on grounds of nationality;
- The national rule that prohibits only own nationals from being extradited, and not nationals from other EU Member States, gives rise to unequal treatment;
- This is a restriction on the freedom of movement, within the meaning of Art. 21 TFEU;
- This restriction can be justified only where it is based on objective considerations and is proportionate to the legitimate objective of the national provisions.

Second, the CJEU reiterated that extradition is a legitimate means to avoid the risk of impunity. In the *Petruhhin* case, however, it was possible to settle the conflict with the Union's non-discrimination rule by giving the EU country of nationality the opportunity to exercise jurisdiction first.

Although this avenue is barred if extradition (by a third country) is sought for the purpose of enforcing a sentence, the requested EU Member State must consider mechanisms that are consistent with the objective of non-impunity, but are less prejudicial to the person's status as Union citizen.

In this context, the CJEU observed that Art. 3 of the Finnish Law on International Cooperation provides foreigners who permanently reside in Finland with the possibility to serve criminal law sanctions imposed abroad in Finland. In fact, Finnish law already provides for comparable situations in which permanent residents who demonstrate a certain degree of integration into the State's society can be treated as Finnish nationals (provided the person concerned as well as the requesting State consent).

The CJEU therefore concluded that Arts. 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.

### ***Put in Focus***

In further development of the *Petruhhin* doctrine, the CJEU's judgment first means that, in situations in which extradition requests from third countries collide with issues of enforcing custodial sentences, EU Member States must also pay attention to the rights of nationals of other EU Member States. The CJEU made clear that alternative, mechanisms less prejudicial to extradition, which apply to own nationals, must also be extended to Union citizens.

In a second line of reasoning, however, the CJEU established an important restriction: Member States may apply this equal treatment on the condition that the Union citizen is a permanent resident and has demonstrated its integration into the Member State's society. In this context, previous CJEU case law on who can be considered a "permanent resident" must be recalled. The CJEU also emphasised that the person concerned may face extradition "on the basis of applicable national or international law" if the courts of the requested Member State cannot establish a "permanent residence."

This ruling and the exception to it may trigger further references for preliminary rulings. The present ruling seems fitting for the Finnish case, specifically the situation of the person sought (Mr. Raugevicius) and the particular circumstances of Finnish law that include foreigners in the cross-border enforcement of custodial sentences.

Several questions remain:

- What if national law only confers the possibility to serve foreign custodial sentences to its own nationals?
  - Which degree of integration must a Union citizen have in the requested EU Member State?
  - To what extent does the State's obligations go under the traditional principle of "*aut dedere aut iudicare*"?
- 

## About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and "criministrative" law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to [eucrim-subscribe@csl.mpg.de](mailto:eucrim-subscribe@csl.mpg.de) to receive alerts for new releases of issues.

The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



**Co-funded by  
the European Union**