

# CJEU Transfers Petruhhin Doctrin to EFTA Nationals



Thomas Wahl

News

On 2 April 2020, the Grand Chamber of the CJEU decided that the outcome of the landmark *Petruhhin* judgment (cf. [eucrim 3/2016](#), p. 131) must be applied by analogy to a national of an EFTA State if his/her extradition is sought by a third country (*Case C-897/19 PPU, I.N./Ruska Federacija*). In particular, the EU Member State deciding on the extradition must take into account circumstances in the EFTA State that may hinder the extradition, e.g., inhuman treatment/punishment. In addition, the EU Member State must inform the EFTA State of the extradition request, so that this State can apply for surrender of his/her national.

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ISSN: 1862-6947

<https://eucrim.eu>

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## *Facts of the Case:*

The Russian Federation had requested extradition of a Russian-Icelandic national from Croatia for the purpose of criminal prosecution. On appeal before the Croatian Supreme Court, the person concerned objected the admissibility of the extradition, arguing that Iceland had granted him asylum on the ground of risks of inhuman/degrading treatment in Russia and precisely on account of the criminal proceedings that had contributed to the extradition request. In addition, he put forward that Croatia had not taken into account the principles set out in the *Petruhhin* judgment of 6 September 2016. In essence, the CJEU ruled in *Petruhhin* that, when a Member State receives an extradition request concerning a European Union citizen (a national of another Member State) who moved to that Member State, it must inform the Member State in which the citizen holds nationality (home country). Should the home country so request (provided that it has jurisdiction to prosecute for the offences committed outside its national territory), the citizen must be surrendered in accordance with the Framework Decision on the European Arrest Warrant, i.e. surrender to the EU Member State of nationality takes precedence over extradition to a third country.



## *Question Referred:*

The Croatian Supreme Court posed the question as to whether the interpretation given in the *Petruhhin* judgment must also be followed if the person concerned is an Icelandic national, i.e., a national from an EFTA State that is party to the 1992 Agreement on the European Economic Area (EEA).

## *Decision of the CJEU:*

The CJEU first had to solve the problem that Arts. 18 and 21 TFEU, which confer the rights of non-discrimination and free movement to EU citizens, and on which the *Petruhhin* judgment was based, do not apply in the present case. However, the CJEU found that similar rights exist in the EEA Agreement. In particular, the freedom to provide services enshrined in the EEA Agreement includes the freedom to travel to another State

in order to receive services there. This situation was given in the present case, as the Icelandic national concerned wished to spend his holidays in Croatia and thus to receive services related to tourism there.

Secondly – and in line with the Petruhhin judgment – the CJEU clarified that the EU Member State must offer the EFTA national the protection provided by Art. 19(2) CFR, under the terms of which 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. The fact that the requested person received status as a refugee precisely on account of the criminal proceedings that were the subject of the extradition request is substantial evidence - also for the Croatian authorities to refuse extradition, unless they have other evidence (e.g., the person concerned concealed the criminal proceedings against him at the time of the asylum request).

Thirdly, the CJEU examined which obligations would apply if the Croatian court concluded that extradition was admissible. The judges in Luxembourg reiterated their case law in Petruhhin, according to which the risk of a perpetrator's impunity is a legitimate justification for restricting the freedom of movement. However, this restriction must be proportional. It is therefore a less severe encroachment if the home country is given the opportunity to issue a request for the surrender of its national for the purpose of prosecution. Although the FD EAW is not applicable, surrender could be effectuated on the basis of the 2006 Agreement between the EU and Iceland and Norway on the surrender procedure that entered into force on 1 November 2019 and that established rules similar to those of the FD EAW (for the Agreement, see [eucrim 3/2019, p. 177](#)).

#### *Put in Focus:*

Initially, the judgment strengthens the position of the individual, because the CJEU recognises his/her fundamental rights protection under the CFR. The CJEU provides for a clear direction in that extradition is probably inadmissible because of severe infringements of the requested person's rights in Russia. Interestingly, the CJEU (indirectly) established a kind of "mutual recognition" of public order grounds, giving rise to the refusal of extradition, because evidence for non-extradition was already laid down in Iceland.

Next, the CJEU further expands its revolutionary case law on judicial cooperation between EU Member States and third countries (here: the Russian Federation). Nationals from EFTA States (Iceland, Liechtenstein, and Norway) enjoy the same protection as EU citizens. Although both EU citizens and EFTA nationals are not put on the same level as nationals of the requested State, who enjoy the right not to be extradited to non-EU countries in most Continental European countries, the "notification system" established by the Petruhhin judgment has a considerable impact on extradition practice: Third countries must queue, because home countries have the "right of first access" to the alleged perpetrator.

Nevertheless, open questions remain: The CJEU obviously negates the fact that the EU-Iceland Agreement on the surrender procedure was not in force at the time of the extradition decision in Croatia (September 2019). It also does not deal with the fact that the requested person had double nationality, including the nationality of the prosecuting State (here: Russia).

The next question is whether the Petruhhin doctrine also works for nationals from other countries associated with the EU, e.g., Swiss nationals. On the one hand, Switzerland is not party to the 1992 EEA Agreement, but aligned to the EU by bilateral agreements with similar contents. On the other hand, there is no special surrender regime in place between the EU and Switzerland. Instead, extradition relations with EU countries follow the 1957 CoE extradition convention, to which the Russian Federation is also party. This means that extradition is not as easy as with the EU-Iceland/Norway Surrender Agreement. As far as the extradition context is concerned, Switzerland is on the same level as the Russian Federation.

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



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