

ECJ Ruled on Mutual Recognition of Refugee Status in Extradition Proceedings

Thomas Wahl

On 18 June 2024, the [ECJ ruled](#) that an EU Member State cannot extradite a third-country national to his country of origin if he has been granted refugee status by another EU Member State. As long as this status has not been revoked or withdrawn, extradition may not take place, as this would violate the protection rights under Art. 21 of the Qualification [Directive 2011/95/EU](#) in conjunction with Arts. 18 and 19 (2) of the [Charter of Fundamental Rights of the EU](#). Furthermore, the EU Member States involved must cooperate.

Background of the case and question referred

In the case at issue ([Case C-352/22, Generalstaatsanwaltschaft Hamm \(Demande d'extradition d'un réfugié vers la Turquie\)](#)), a Turkish national of Kurdish origin had been recognized as a refugee by Italian authorities in 2010. The reason was that he was at risk of political persecution in Turkey because of his support of the Kurdistan Workers' Party (PKK). He had been in Germany since 2019. Germany received an extradition request from Turkey where he was suspected of murder.

The referring Higher Regional Court of Hamm, Germany, which has to decide on the Turkish extradition request, asked the ECJ whether, under EU law, it is bound by the Italian decision granting refugee status to the person concerned, so that it is obliged to refuse the extradition sought by the country of the refugee's origin (Turkey).

The referring court pointed out that interpretation of EU legislation is under dispute in German legal literature. One approach argues that it follows from Art. 9(3) of the EU Asylum Procedures [Directive 2013/32](#) that extradition to a third country is precluded if a person is recognised refugee status by a final decision in an EU Member State. If the extradition authority granted extradition, rules and procedures for the cessation, exclusion and ending of refugee status would risk being circumvented.

According to a second approach (which is shared by the referring court), EU legislation does not contain any provision stipulating a binding effect of a Member State's decision granting refugee status for extradition purposes. Consequently, an authority in another EU Member State can make an own assessment of the risk of political persecution and decide independently on granting extradition to the country of origin.

For more background information on the case → [eucrim 3/2023, 263-264](#).

AUTHOR

Thomas Wahl

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

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The ECJ's approach: EU legislation unclear

The ECJ, sitting as the Grand Chamber, first pointed out that Union law is indeed unclear: On the one hand, recognition by a Member State of refugee status is declaratory, thus the refugee is entitled to all the rights and benefits laid down in Directive 2011/95. On the other hand, the EU legislature has not established yet a principle that Member States are obliged to recognise automatically the decisions granting refugee status that have been adopted by another Member State. Furthermore, Art. 9 of Directive 2013/32, which regulates the right to remain in the Member State, only governs cases of extradition *during* the procedure for examining an application for international protection; the article does not, however, govern the situation at issue, in which extradition is sought *after* such protection has been granted by a Member State.

ECJ: Extradition would *de facto* end effective enjoyment of refugee's rights

Therefore, the solution must be deduced from Art. 21(1) of Directive 2011/95, which includes the Member States' obligation to respect the principle of non-refoulement, as well as from Art. 18 of the Charter, which guarantees the right to asylum, and Art. 19(2) of the Charter, which prohibits in absolute terms the removal of a person 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.

According to the ECJ, the Common European Asylum System acknowledges the principle of mutual trust and includes a specific procedure for revoking or withdrawing refugee status. Those provisions and the procedure would be circumvented if the requested Member State could extradite a third-country national who had been granted refugee status by another Member State to his or her country of origin, since, *de facto*, such an extradition would effectively end that status and deprive the person concerned of the effective enjoyment of the protection afforded by Art. 18 of the Charter, of the rights and benefits provided for by Chapter VII of Directive 2011/95, and of the guarantees set out in Art. 45 of Directive 2013/32.

ECJ: Member States must cooperate

From a procedural point of view and considering the principle of sincere cooperation, the ECJ adds that the competent extradition authority (here: the German judicial authorities) must, as soon as possible, exchange information with the authority of the other Member State which granted the requested individual refugee status (here: the Italian asylum authority). On this basis, the extradition authority is required to inform the asylum authority of the request for extradition relating to that individual, to send it its opinion on that request and to obtain from it, within a reasonable period, both the information in its possession that led to refugee status being granted and its decision as to whether or not it is necessary to revoke or withdraw that individual's refugee status. This mechanism allows both authorities to have a sound information basis for their respective decisions.

If the asylum authority revokes or withdraws refugee status, the extradition authority must nevertheless itself examine whether the person concerned is no longer a refugee, because formal recognition of refugee status is only declaratory (see above). In addition, the extradition authority must satisfy itself that there is no serious risk that the person concerned would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment in the requesting country (here: Turkey).

Put in focus

The question of the binding effect of decisions in asylum proceedings for extradition purposes has been the subject of heated debate for decades. The ECJ has now provided a clear guideline for one constellation of cases. If refugee status is recognised by an authority of an EU Member State, the authorities of another EU

Member State that have to decide on the extradition of a fugitive must also comply with it. Such a binding effect has so far been rejected in German extradition practice, mainly based on a ruling by the Federal Constitutional Court in 1979. It was merely recognised that a positive asylum decision in another EU Member State is a strong indication of whether the obstacle of political persecution exists, but a binding effect was denied.

Little consideration has been given to the fact that the EU legal situation has changed considerably in the meantime. And the ECJ's decision is also based on this.

The ECJ's decision strengthens the position of refugees who are wanted in their home country for criminal offences. Above all, the ECJ emphasises the *effet utile* of safeguards and the idea of circumvention: the extraditing authority would circumvent the protection and procedural rights that the asylum procedure grants the individual. The EU country that granted refugee status is to be given the right of first refusal. It must decide on the revocation of refugee status, if necessary. This not only recognises the binding effect of asylum decisions of other Member States but also establishes the principle of mutual recognition of such decisions within the bloc.

In doing so, the ECJ is deviating from its [decision in Case C-753/22](#), also handed down on 18 June 2024. This case concerned the recognition of refugee status in two asylum procedures, and the ECJ ruled that a Member State is not obliged to automatically recognise refugee status granted in another Member State.

In practice, a distinction must therefore be made between two sets of circumstances regarding the binding effect of asylum decisions: those for conflicts in between asylum proceedings and those for conflicts between extradition and asylum proceedings.

This is also interesting in view of the fact that the Advocate General (AG) in the case of the Higher Regional Court of Hamm concurred with the opinion that a binding effect should be rejected (→ [eucrim 3/2023, 263-264](#)). The judges in Luxembourg differed from this opinion and preferred another reading of the relevant EU asylum provisions. They focused more on the implications of the guarantees in the Charter on the individual's situation and the principle of non-refoulement than the AG did.

Finally, what is interesting about the ECJ decision is that the Luxembourg judges once again emphasise the need for cooperation between the authorities. Similar to the case law on the extradition of EU citizens to third countries (key word: "*Petruhhin*" → [eucrim 3/2016, 131](#)), the ECJ requires the authorities involved to exchange information and discuss the case together. In practice, this can lead to implementation difficulties because there is no network to facilitate cooperation between the law enforcement authorities that decide on extradition and the administrative authorities that are responsible for the asylum procedure. This case may therefore provide an opportunity to consider a European Judicial Network 2.0. (TW)

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