Editorial

Europeans First!: Petruhhin, an Unexpected Revolution in Extradition Law

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With its decision in the case of Petruhhin,¹ the Court took a surprising step that will have unprecedented consequences in the field of extradition law. Extradition law? Is that within the competence of the Court? It is especially the unexpected expansion of the protection of EU citizens in relation with third states that qualifies the Petruhhin judgment as a revolutionary decision. A decision that might have an impact as impressive as the groundbreaking decision of the European Court of Human Rights in Soering v. United Kingdom in 1989.²

The consequences will be felt first in extradition relationships, but potentially in several other areas of international cooperation with third states, such as transfer of judgments and transfer of proceedings.

First, a brief description of the relevant facts of the case. Mr Petruhhin, an Estonian national, was made the subject of a priority red notice on Interpol’s website by Russia in 2010. He was arrested on 30 September 2014 in Latvia and placed in provisional custody on 3 October 2014. The Russian authorities informed the Latvian authorities that Petruhhin was accused of large scale organised drug trafficking for which he could be punished with a term of imprisonment of between 8 and 20 years. Petruhhin appealed with the Supreme Court of Latvia against the decision of the Public Prosecutor’s Office to grant his

¹ ECJ, 6 September 2016, Case C-182/15, proceedings relating to the extradition of Aleksei Petruhhin.
² ECtHR, 7 July 1989, Soering v. United Kingdom, Series A-161.
extradition to Russia. Before the Supreme Court, counsel to Petruhhin argued that on the basis of a treaty between Latvia, Estonia and Lithuania, he was entitled to the same protection as given to nationals of Latvia. This would mean that he could not be extradited. The Supreme Court referred for a preliminary ruling to the Court of Justice, specifically on the issue whether Petruhhin’s status as an EU national would give him any protection vis-à-vis a third state.

The basic issue for the Court is whether a national of a Member State, found in another Member State for the purposes of extradition to a third state, may benefit from any protection under Article 18 TFEU (non-discrimination on the basis of nationality) or Article 21 TFEU (free movement of residence), because national law protects nationals against extradition or applies specific conditions to it. The first step the Court takes is to discuss within whose competence rules of extradition fall. In the absence of an international agreement between the EU and Russia, extradition remains within the competence of the Member States. However, in situations covered by Union law, national rules will be influenced by Union law in its application. For the Court, EU national Petruhhin found himself in such a situation, and that has effects on his legal position.

The approach chosen to find that the situation is within the sphere of application of the treaties is similar to other cases. The Court identifies that the requested person is an EU citizen, who made use of his right to move freely within the EU, and went to another Member State. By doing so, he brought himself within the scope of protection of Article 18 TFEU. The Court then takes note of the fact that Latvian law makes a difference between the treatment of Latvian nationals and other EU Member States’ nationals concerning extradition to third states. This is subsequently regarded as a restriction to the

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3 It is interesting to see that later on this tripartite treaty no longer plays a role in the debate, which focuses completely on the obligations deriving from the TFEU and TEU.

4 ECJ, 6 September 2016, Case C-182/15, proceedings relating to the extradition of Aleksei Petruhhin, par. 26 and 27.


6 Interestingly, there is a new reference for a preliminary ruling concerning Austrians who wish to know whether they are protected in Germany as Germans against extradition, before they make use of their right to free movement. See Request for a preliminary ruling from the Bezirksgericht Linz (Austria) lodged on 7 September 2015, Peter Schotthöfer & Florian Steiner GbR v Eugen Adelsmayr (Case C-473/15). Would the Court declare this inadmissible, because they are not yet making use of free movement?

7 AG Bot endorses this view. See Opinion of AG Bot of 10 May 2016, point 34–43.