

Joint Report of Eurojust and the European Judicial Network on the extradition of EU citizens to third countries

Date: 25 November 2020

URL: <https://europa.eu/!Mq86rd>

In its 2016 *Petruhhin* judgment, the Court of Justice of the European Union (CJEU) introduced specific obligations for Member States that do not extradite their own nationals and receive an extradition request for the prosecution of an EU citizen who is a national of another Member State and has exercised his right to free movement.

On 4 June 2020, the Council requested that the European Union Agency for Criminal Justice Cooperation (Eurojust) and the European Judicial Network (EJN) analyse how cases of requests for the extradition of EU citizens by third countries are handled in practice, and that they report to the Council by 1 December 2020.

The aim of this joint report by Eurojust and the EJN is to inform the Council of the main difficulties encountered by practitioners in this field. It is based on an analysis of Eurojust cases registered after the delivery of the *Petruhhin* judgment in September 2016 and on the experience of the EJN. Therefore, the report does not aim at providing an exhaustive overview of all possible issues raised by the abovementioned case-law across the EU, but focuses only on issues identified by Eurojust and the EJN in their respective casework.

The report confirms that the application of the CJEU's case-law on the extradition of EU citizens raises several practical and legal issues, and that Eurojust and the EJN have played an important role in facilitating cooperation between the Member States involved, and sometimes also with third countries.

The most relevant issues identified, followed where possible by Eurojust's/the EJN's recommendations, are as follows.

- Uncertainties as to the scope of the CJEU's case-law.
 - Lack of clarity as to the extent of the requested Member State's obligations in case of an extradition request for the execution of a custodial sentence.
 - Possible application of the consultation mechanism in cases that do not fulfil all the conditions of the CJEU's case-law.

Further clarification of the scope of the CJEU's case-law is recommended.

- Practical and legal issues concerning the consultation procedure.
 - Difficulties to identify the competent authorities in the Member State of nationality.
 - Different practices relating to the required information to be provided to the Member State of nationality concerning the extradition request.
 - Uncertainties as to which Member State should be responsible for the translation of the information provided to the Member State of nationality and bear its costs.
 - Different practices relating to the time limits given for the decision by the Member State of nationality on whether to prosecute the requested person.

- Different practices relating to the type of assessment carried out by the Member State of nationality when deciding whether to prosecute the requested person.
- Uncertainties as to the judicial cooperation instrument to be used to ensure prosecution in the Member State of nationality, particularly if the thresholds for issuing a national arrest warrant and/or a European arrest warrant are not met.
- Relevance of addressing not only the question of the jurisdiction, but also that of which country is best placed to prosecute and consequently prevent impunity.
- Tensions between obligations stemming from EU law on the one hand and obligations stemming from bilateral and multilateral extradition treaties on the other hand.

Further clarification on the abovementioned issues is recommended.

- The results of the consultation procedure.
 - In the vast majority of analysed cases, the consultation procedure activated by the requested Member State did not lead to the prosecution of the EU citizen in their Member State of nationality. Such a mechanism appears to be beneficial only where parallel proceedings are already ongoing against the requested person in the Member State of nationality.
- The role of Eurojust and of the EJM.
 - Both Eurojust and the EJM have played and will continue to play an important role in assisting and supporting national authorities with practical and legal issues.

A detailed explanation of the practical and legal issues/recommendations mentioned above, including several other ongoing issues, can be found in this report. In addition, (anonymised) case examples, presented by Eurojust and the EJM, have been provided to help in explaining the issues at stake.