

Extradition of EU citizens to third countries

Main conclusions of a joint report by Eurojust and the EJM



Basis of the joint report

In September 2016, the **Court of Justice of the European Union (CJEU)** rendered a judgment in the *Petruhhin case*, to be subsequently confirmed in case-law, on the issue of extradition, where an EU Member State is faced with an extradition request from a third country concerning a citizen of another EU Member State.

In its judgement, the CJEU introduced an obligation to carry out a **consultation procedure** between the *requested Member State* and the *Member State of nationality* of the EU citizen, to give the latter an opportunity to prosecute its citizen.

The **application of the case law** has proved difficult in practice, and in June 2020, the Council invited Eurojust and the EJM to analyse the reasons.

Scope of the analysis



- ▶ Eurojust's analysis is based on **72 cases** involving extradition requests from third countries for EU citizens, registered in its case management system by the Desks of **10 Member States**.
- ▶ The EJM analysis is based on exchanges of experience within the context of an **EJM reference group** dedicated to the question of extradition of EU citizens, composed of EJM contact points from **15 Member States** and **4 third countries**.
- ▶ Both Eurojust and the EJM used **questionnaires** to collect further relevant information.

"The report confirms that the application of the CJEU's case-law on the extradition of EU citizens raises several practical and legal issues"



Main difficulties identified

- ▶ **Uncertainty** about which authority to approach in the *Member State of nationality*, which Member State should deal with and bear the costs of translation, and/or which judicial cooperation instrument is best applied to ensure prosecution in the *Member State of nationality*.
- ▶ **Different practices** related to the extent of information provided, deadlines given for replies and decisions, and types of assessments carried out.
- ▶ **Tensions between obligations** under EU law on the one hand, and bilateral and multilateral extradition treaties on the other.
- ▶ **Several parallel channels** used to inform and transmit information, often leading to duplication of effort, uncertainty and confusion.



Main conclusions

- ▶ The consultation procedure is viewed by many practitioners as a bureaucratic formality that is costly and time-consuming.
- ▶ The consultation mechanism can be beneficial in cases where parallel criminal proceedings for the offence mentioned in the extradition request are ongoing in the *Member State of nationality*.
- ▶ Questions remain on how CJEU case-law should be applied to extradition requests for the execution of custodial sentences where the requested person is not a long-term resident of the *requested Member State*.
- ▶ Conditions required for the consultation procedure are not always verified or systematically checked.
- ▶ Authorities face many practical and legal questions when carrying out the consultations.
- ▶ Both Eurojust and the EJM play a key role in facilitating and supporting the consultation procedure.
- ▶ Procedural differences across national legal systems and the specific circumstances of each case call for more clarity as well as flexibility.

Eurojust and the EJM play an important role in:

- ▶ Identifying the competent authority in the *Member State of nationality* to receive information on an extradition request;
- ▶ Facilitating exchanges of information, and speeding up the processing of requests;
- ▶ Clarifying practical issues regarding e.g. deadlines, documents to be provided, and translations of information exchanged;
- ▶ Clarifying legal issues related to judicial cooperation instruments;
- ▶ Clarifying applicable national requirements and procedures;
- ▶ Providing translation services in certain urgent situations (Eurojust);
- ▶ Facilitating and coordinating discussions on which country is best placed to prosecute (Eurojust);
- ▶ Potentially using the EJM's specialised website repository to host information on the competent authority to approach in each country.