Extradition of EU citizens to third countries

Main conclusions of a joint report by Eurojust and the EJN

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 EJN to analyse the reasons.

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 EJN 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 EJN 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 EJN's specialised website repository to host information on the competent authority to approach in each country.

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 EJN analysis is based on exchanges of experience within the context of an EJN reference group dedicated to the question of extradition of EU citizens, composed of EJN contact points from 15 Member States and 4 third countries.
- Both Eurojust and the EJN 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”