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NOTE

From: Austrian delegation
To: Delegations

Subject: Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States
- Note by AT on the application of the CJEU judgment in case C-247/17 (Raugevicius) - EAW and third States

Implications of the case Raugevicius (C-247/17)

The Russian Federation was seeking extradition of Mr. Raugevicius, who was of Lithuanian and Russian nationality, from Finland for the purpose of enforcing a custodial sentence.

Mr. Raugevicius challenged his extradition on the ground, inter alia, that he had lived in Finland for a considerable length of time and that he was the father of two children residing in that Member State who are of Finnish nationality.

In its judgment of 13 November 2018, the CJEU also cited provisions from the European Convention on Extradition, applicable in this case, in particular Art. 6 on the extradition of own nationals.

Key findings:

- “Consequently, with regard to an extradition request to enforce a sentence, it must be stated, first, that, [...] mechanisms [...] exist for them to be able to serve their sentence in the territory of that Member State.” (para 39)
- “ If that is the case, it is clear from that provision that Mr Raugevicius could serve the sentence which he received in Russia in Finland, **provided that both Russia and Mr Raugevicius himself consent to this.**” (para 42)
- “Therefore, Articles 18 and 21 TFEU require that nationals of other Member States who reside permanently in Finland and whose extradition is requested by a third country for the purpose of enforcing a custodial sentence should benefit from the provision preventing extradition from being applied to Finnish nationals and may, under the same conditions as Finnish nationals, serve their sentences on Finnish territory.” (para 47)
- “In the light of the foregoing considerations, the answer to the questions referred is that Articles 18 and 21 TFEU must be interpreted as meaning that, where an extradition request has been made by a third country for an EU citizen who has exercised his right to free movement, not for the purpose of prosecution, but for the purpose of enforcing a custodial sentence, the **requested Member State**, whose **national law prohibits the extradition of its own nationals** out of the European Union for the purpose of enforcing a sentence **and makes provision for the possibility that such a sentence pronounced abroad may be served on its territory, is required to ensure that that EU citizen**, provided that he resides permanently in its territory, **receives the same treatment** as that accorded to its own nationals in relation to extradition.” (para 50)

Questions:

1. Do delegations agree that in particular the final findings (para 50 above) of the Court have to be interpreted against the background of para 42 of the judgment. There, the Court explicitly refers to the consent, not only of the person concerned but also of the requesting State.

2. In case the answer to question 1 is negative (and, in particular, the consent of the requesting State is not necessary, because the requested MS would have to treat nationals and EU citizens in the same way), the requested MS would have to deny extradition based on one of the grounds for refusal cited in the European Extradition Convention.

The Austrian delegation would have considerable problems with the implementation of this judgment because it would seem questionable on which ground the request for extradition could be refused. Apart from Art. 6 no grounds for refusal address the problem in question. Art. 6 only allows for refusal in respect to own nationals. In addition, para 2 allows for a declaration on the definition of the term “nationals” only at the time of signature or of deposit of its instrument of ratification or accession. Therefore, the Austrian delegation believes that a MS could not deny extradition on the ground that the person concerned is national of another EU MS.

How would delegations solve the conflicting obligations between EU law (equal treatment of EU citizens, permanently residing in the requested MS, and own nationals) on the one hand and obligations stemming from the European Extradition Convention on the other hand, that would not allow for denial of extradition in such a situation?

3. In case question 1 is answered in the affirmative and the requesting State would not consent to enforcement of the judgment in the requested MS: What is the opinion of delegations on the relationship with the judgment of 6 September 2016, C-182/15, Petruhhin? Would the requested MS have to inform the MS, whose citizen the person concerned is?

Remark:

There is another case pending, touching upon the same issue, the relationship between extradition to third countries and European arrest warrant: C-398/19.