ECLI:EU:C:2020:1032

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

17 December 2020 (*)

(Reference for a preliminary ruling – Citizenship of the European Union – Articles 18 and 21 TFEU – Extradition of a Union citizen to a third State – Person acquiring Union citizenship after transferring the centre of his or her interests to the Member State from which extradition is requested – Scope of EU law – Prohibition on extradition applied solely to own nationals – Restriction on freedom of movement – Justification based on the prevention of impunity – Proportionality – Information to the Member State of which the requested person is a national – Obligation on the Member State from which extradition is requested and the Member State of origin to ask the third State requesting extradition to send the criminal investigation file – No obligation)

In Case C-398/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kammergericht Berlin (Higher Regional Court, Berlin, Germany), made by decision of 14 May 2019, received at the Court on 23 May 2019, in the proceedings relating to the extradition of

BY

Joined party:

Generalstaatsanwaltschaft Berlin,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, M. Vilaras, E. Regan, M. Ilešič, L. Bay Larsen, A. Kumin and N. Wahl, Presidents of Chambers, S. Rodin, F. Biltgen, K. Jürimäe (Rapporteur), C. Lycourgos, I. Jarukaitis and N. Jääskinen, Judges,

Advocate General: G. Hogan,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 16 June 2020,

after considering the observations submitted on behalf of:

– BY, by K. Peters, Rechtsanwalt,

– the German Government, by J. Möller, M. Hellmann, R. Kanitz, F. Halabi and A. Berg, acting as Agents,

– Ireland, by M. Browne, G. Hodge, J. Quaney and A. Joyce, acting as Agents, and by M. Gray, Senior Counsel,

– the Greek Government, by V. Karra, A. Magrippi and E. Tsaousi, acting as Agents,

– the Latvian Government, by I. Kucina, V. Soņeca and L. Juškeviča, acting as Agents,

– the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,

– the Austrian Government, by J. Schmoll and M. Augustin, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the Romanian Government, by L. Liţu, S.-A. Purza and C.-R. Canţăr, acting as Agents,

– the European Commission, by S. Grünheid and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 September 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 18 and 21 TFEU, and of the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630).

2 The request has been made in the context of an extradition request, sent by the authorities of Ukraine to the authorities of the Federal Republic of Germany, concerning BY, who is a national of both Ukraine and Romania, for the purposes of conducting a criminal prosecution.

Legal context

European Convention on Extradition

3 Article 1 of the European Convention on Extradition, signed in Paris on 13 December 1957 (‘the European Convention on Extradition’), provides:

‘The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.’

4 Article 6 of that convention, headed ‘Extradition of nationals’, provides:

‘1 (a) A Contracting Party shall have the right to refuse extradition of its nationals.

(b) Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term “nationals” within the meaning of this Convention.

(c) Nationality shall be determined as at the time of the decision concerning extradition. …

2. If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.’

5 Article 12(2) of the Convention states:

‘The request shall be supported by:

(a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;

(b) a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and

(c) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.’

6 The Federal Republic of Germany made a declaration pursuant to Article 6 of the European Convention on Extradition in the following terms:

‘Extradition of Germans from the Federal Republic of Germany to a foreign country is not permitted by virtue of Article 16, paragraph 2, first sentence, [of the Grundgesetz für die Bundesrepublik Deutschland (the Basic Law for the Federal Republic of Germany) of 23 May 1949 (BGBl 1949 I, p. 1)] and must, therefore, be refused in every case.

The term “nationals” within the meaning of Article 6 paragraph 1(b), of the European Convention on Extradition covers all Germans within the meaning of Article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany.’

Framework Decision 2002/584/JHA

7 Article 1(1) and (2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) provides:

‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.'

German law

Basic Law for the Federal Republic of Germany

8 Article 16, paragraph 2, of the Basic Law for the Federal Republic of Germany provides:

'No German national may be extradited to a foreign country. Statutory provision in derogation from the foregoing may be made for extradition to a Member State of the European Union or to an international court of justice, provided that the principles of the rule of law are observed.'

The Criminal Code

9 Paragraph 7 of the Strafgesetzbuch (Criminal Code), in the version applicable to the main proceedings, provides:

'(1) German criminal law applies to offences committed abroad against a German national if the act is a criminal offence in the State where it is committed or if the place where the offence is committed is not subject to any criminal law jurisdiction.

(2) German criminal law applies to other offences committed abroad if the act is a criminal offence at the place of its commission or if that place is not subject to any criminal law jurisdiction and if the offender

1. was a German national at the time of the act or became a German national after the act, or

2. was a foreign national at the time of the offence, was found to be staying in Germany and, although extradition legislation would permit extradition for such an offence, is not extradited because a request for extradition is not made within a reasonable period, because a request is rejected or because extradition is not feasible.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 BY is a national of both Ukraine and Romania. He was born in Ukraine and lived in that State until he moved to Germany, which occurred in 2012. In 2014, he applied for and obtained Romanian nationality as a descendant of Romanian nationals who lived in the past in former Romanian Bukovina. He has never resided in Romania.

11 On 15 March 2016, on the basis of an arrest warrant issued by a Ukrainian court, the General Prosecutor's Office of Ukraine sent a formal request for the extradition of BY, for the purpose of conducting a criminal prosecution with respect to misappropriation of funds of a Ukrainian State-owned undertaking. That request was sent to the Federal Republic of Germany via the Ukrainian Ministry of Justice.

12 On 26 July 2016, BY was provisionally arrested. By an order of 1 August 2016 of the referring court, the Kammergericht Berlin (Higher Regional Court, Berlin, Germany), BY was detained pending extradition. On 2 December 2016, after lodging bail, BY was set free subject to bail conditions, in accordance with an order of that court of 28 November 2016.

13 In the interim, by letter of 9 November 2016, accompanied by the order of 1 August 2016 mentioned in the preceding paragraph, the Generalstaatsanwaltschaft Berlin (General Prosecutor's Office in Berlin, Germany) informed the Romanian Ministry of Justice of the extradition request and asked whether the Romanian authorities envisaged that they would themselves conduct a criminal prosecution of BY, as a Romanian national who had committed criminal offences abroad. By letter of 22 November 2016, the Romanian Ministry of Justice replied that the Romanian authorities could make a decision to conduct a criminal prosecution only if requested to do so by the Ukrainian authorities. Following a supplementary enquiry, dated 2 January 2017, whereby the General Prosecutor's Office in Berlin endeavoured to ascertain whether Romanian criminal law permitted such prosecution for the offences concerned, the Romanian Ministry of Justice replied, on 15 March 2017, that the issue of a national arrest warrant, as a prerequisite for the issue of a European arrest warrant, was subject to there being sufficient evidence of the guilt of the individual whose extradition was requested, and asked the General Prosecutor's Office in Berlin to provide it with documents and copies of evidence relating to the offences BY was alleged to have committed that had been sent to that office by the Ukrainian authorities.

14 The referring court states that it infers from that reply that Romanian law does permit, in principle, the prosecution of a Romanian national for offences committed abroad.

15 In the opinion of that court, the extradition of BY to Ukraine is lawful, but may be incompatible with the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), given that the Romanian judicial authorities have not formally made a decision on the possible issue of a European arrest warrant. That court states that, while the Federal Republic of Germany refuses to extradite its own nationals, there is no prohibition on the extradition of nationals of other Member States. That court is, however, uncertain as to how that judgment affects the outcome of the case before it, given circumstances specific to that case which differ from those of the case that gave rise to the abovementioned judgment.

16 First, the referring court states that BY settled in Germany at a time when he had only Ukrainian nationality, and that he did not acquire Romanian nationality until later. BY's residence in Germany does not therefore constitute an exercise of the right conferred on him by Article 21(1) TFEU. The question arises, therefore, whether the principles set out by the Court in the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), are applicable to BY's situation.

17 Second, the referring court draws attention to a practical difficulty in applying the principles stemming from that judgment. That court observes that the Romanian judicial authorities can decide whether it is appropriate, for them, to prosecute BY only if they have access to the evidence incriminating him. That evidence, however, is not part of the information that accompanies an extradition request under Article 12(2) of the European Convention on Extradition, and consequently the Member State from which extradition is requested ('the requested Member State') cannot send that evidence to those authorities. In any event, the sending of that evidence to the Member State of which the person requested for extradition ('the requested person') is a national might, like the sending of the extradition request as a whole, be a matter solely for the sovereign decision of the third State that is requesting extradition.

18 The referring court is uncertain, consequently, whether, when the authorities of the Member State of which the requested person is a national are informed, of the existence of an extradition request, by the requested Member State, those authorities are under an obligation to make an application, to the third State requesting extradition, for the transmission of the criminal investigation file, in order to be able to assess whether they themselves can conduct a criminal prosecution. Such an application might cause significant delays, which would be difficult to justify.

It would be no less difficult, in practice, to insist that the requested Member State ask the third State to send an invitation to conduct that prosecution to the Member State of which the requested person is a national.

19 Third, the referring court adds that German criminal law provides, in Paragraph 7(2) of the Criminal Code, a subsidiary jurisdiction, with respect to the prosecution of offences committed abroad in cases of non-extradition, which extends to foreign nationals. That court is uncertain whether, in order to comply with the principle of non-discrimination laid down in Article 18 TFEU, that provision should be applied and the extradition of a Union citizen should be declared unlawful. In that court's opinion, however, such an approach would undermine the effectiveness of criminal prosecution.

20 In the first place, if, on the basis of that subsidiary jurisdiction, the extradition of a Union citizen is a priori unlawful, the issue of an arrest warrant for the purposes of extradition, and accordingly the detention of the person concerned pending extradition, is not possible, because of another provision of German law. In the second place, a national arrest warrant can be issued in Germany only on the basis of significant indications of guilt, the existence of which can be confirmed only after an analysis of the evidence incriminating the individual whose extradition is requested. In order to obtain that evidence, the German authorities would have to propose to the third State requesting extradition that they themselves should conduct the prosecution or encourage that third State to make a request that they do so, which would cause further delays.

21 In those circumstances, the Kammergericht Berlin (Higher Regional Court, Berlin) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do the principles [stated by the Court] in the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), in relation to the application of Articles 18 and 21 TFEU in a situation where a third State requests the extradition of a Union citizen, also apply if the individual sought moved his or her centre of interests to the requested Member State at a time when he or she was not yet a Union citizen?

(2) Is the home Member State that has been informed of an extradition request obliged, on the basis of the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), to request that the case files be sent to it by the requesting third State for the purpose of assessing the possibility of itself undertaking a prosecution?

(3) Is a Member State that has been requested by a third State to extradite a Union citizen obliged, on the basis of the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), to refuse extradition and to undertake a criminal prosecution itself, if it is possible for it to do so under its national law?'

The jurisdiction of the Court

22 Ireland has raised the objection that the Court has no jurisdiction to hear the present request for a preliminary ruling. Ireland states that the legal situation of a Union citizen falls within the scope of EU law only if that citizen has exercised his or her right to freedom of movement at a time when he or she already had Union citizenship. That was not the situation of BY at the time when he moved the centre of his interests from Ukraine to Germany. Accordingly, BY's residence in Germany is not based on the exercise of a right deriving from Article 21 TFEU and he has not acted as a Union citizen, and consequently he cannot rely on Article 18 TFEU.

23 It is clear that that argument can be subsumed within the examination of the first question, whereby the referring court seeks, in essence, to ascertain whether Articles 18 and 21 TFEU, as interpreted by the Court in the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), are applicable to the situation of a Union citizen who, like BY, moved the centre of his or her interests to a Member State other than that of which he or she is a national at a time when he or she did not yet have Union citizenship.

24 It is plain that the Court has jurisdiction to provide to the referring court the relevant interpretative guidance to enable it to determine whether EU law is applicable to such a situation (see, to that effect, judgment of 5 May 2011, *McCarthy*, C-434/09, EU:C:2011:277, paragraphs 43 and 56).

25 That jurisdiction is not called into question by the fact that, if the first question were to be answered in the negative, to the effect that Articles 18 and 21 TFEU are not applicable to that situation, there would no longer be any need to examine the second and third questions.

26 It follows that the Court has jurisdiction to give a ruling on the present request for a preliminary ruling.

Consideration of the questions referred

The first question

27 By its first question, the referring court seeks, in essence, to ascertain whether Articles 18 and 21 TFEU must be interpreted as meaning that they are applicable to the situation of a Union citizen who is a national of one Member State, who is residing in the territory of another Member State and who is the subject of an extradition request sent to the latter Member State by a third State, even where that citizen moved the centre of his or her interests to that other Member State at a time when he or she did not have Union citizenship.

28 It must be recalled that, in the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraph 30), concerning, as in the present case, an extradition request received from a third State with which the European Union had not concluded an extradition agreement, the Court held that, although, where there is no such agreement, the rules on extradition fall within the competence of the Member States, the situations that fall within the scope of Article 18 TFEU, read in conjunction with the provisions of the FEU Treaty on Union citizenship, include those involving the exercise of the freedom to move and to reside within the territory of the Member States, as conferred by Article 21 TFEU.

29 It is clear from the Court's case-law that a national of a Member State, who thereby has Union citizenship, and who is lawfully resident in the territory of another Member State, falls within the scope of EU law (see, to that effect, judgments of 2 October 2003, *Garcia Avello*, C-148/02, EU:C:2003:539, paragraphs 26 and 27, and of 8 June 2017, *Freitag*, C-541/15, EU:C:2017:432, paragraph 34).

30 Accordingly, by virtue of having Union citizenship, a national of a Member State residing in another Member State is entitled to rely on Article 21(1) TFEU (see, to that effect, judgments of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraph 26, and of 2 October 2019, *Bajratari*, C-93/18, EU:C:2019:809, paragraph 26 and the case-law cited) and falls within the scope of the Treaties, within the meaning of Article 18 TFEU, which sets out the principle of non-discrimination on grounds of nationality (see, to that effect, judgments of 6 September 2016,

Petruhhin, C-182/15, EU:C:2016:630, paragraph 31 and the case-law cited, and of 13 November 2018, *Raugevicius*, C-247/17, EU:C:2018:898, paragraph 27).

31 The fact that that Union citizen acquired the nationality of a Member State and, therefore, Union citizenship, only at a time when he or she was already residing in a Member State other than that of which he or she subsequently became a national is not capable of invalidating that consideration. A contrary interpretation, in so far as it would prevent such a citizen from taking advantage of the rights conferred by Union citizenship, would undermine the effectiveness of such status, destined to be the fundamental status of nationals of the Member States (see, in that regard, judgment of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458, paragraph 31).

32 The same can be said of the fact that the Union citizen whose extradition is requested also holds the nationality of the third State which made that request. Holding dual nationality of a Member State and a third State cannot deprive the person concerned of the freedoms he or she derives from EU law as a national of a Member State (judgment of 13 November 2018, *Raugevicius*, C-247/17, EU:C:2018:898, paragraph 29 and the case-law cited).

33 In the main proceedings, it is apparent from the order for reference that BY, a Romanian national, is exercising, in his capacity as a Union citizen, his right, under Article 21 TFEU, to reside in another Member State, in this instance the Federal Republic of Germany, and consequently his situation falls within the scope of the Treaties, within the meaning of Article 18 TFEU, notwithstanding the fact that, on the one hand, he transferred the centre of his interests to the latter Member State at a time when he had not yet acquired Romanian nationality and, on the other, that he is also a national of the third State that is requesting his extradition.

34 In the light of the foregoing, the answer to the first question is that Articles 18 and 21 TFEU must be interpreted as being applicable to the situation of a Union citizen who is a national of one Member State, who is residing in the territory of another Member State and who is the subject of an extradition request sent to the latter Member State by a third State, even where that citizen moved the centre of his or her interests to that other Member State at a time when he or she did not have Union citizenship.

The second question

35 As a preliminary point, it should be recalled that, according to the Court's settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. In that light, the Court may have to reformulate the questions referred to it (judgments of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraph 33, and of 8 June 2017, *Freitag*, C-541/15, EU:C:2017:432, paragraph 29).

36 In this instance, by its second question, the referring court expresses doubts as to the obligations which might, in the context of the exchanging of information referred to in paragraphs 47 to 49 of the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), be incumbent on the Member State of which the requested person is a national, that person being a Union citizen subject to an extradition request sent, by a third State, to the Member State in whose territory that person is residing. As formulated by the referring court, that question concerns the possible existence of an obligation, binding on the Member State of which the requested person is a national, to ask the third State that is requesting extradition to send to it the file relating to the criminal offence which that person is alleged to have committed.

37 However, since that exchange of information is based on the cooperation of those two Member States and since, in the reasons stated for the request for a preliminary ruling, the referring court addresses the obligations incumbent on both those Member States, it is appropriate, in order to give that court a full answer, to take the view that the purpose of the second question is also to determine the obligations incumbent on the requested Member State in respect of the exchange of information referred to in the preceding paragraph of the present judgment.

38 In those circumstances, the second question should be reformulated, and it must be considered that, by that question, the referring court is seeking, in essence, to ascertain whether Articles 18 and 21 TFEU must be interpreted as meaning that, where the Member State of which the requested person is a national, that person being a Union citizen subject to an extradition request sent, by a third State, to another Member State, has been informed by that other Member State of the existence of that request, either of those Member States is obliged to ask the third State requesting extradition to send to them the criminal investigation file in order to enable the Member State of which that person is a national to assess the possibility that it might itself conduct a criminal prosecution.

39 In the first place, it must be recalled that, in accordance with the Court's case-law, the national rules of a Member State on extradition which give rise, as in the main proceedings, to a difference in treatment depending on whether the requested person is a national of that Member State or a national of another Member State, in so far as they have the consequence that nationals of other Member States who are lawfully resident in the territory of the requested Member State are not afforded the protection against extradition enjoyed by nationals of the latter Member State, are liable to affect the freedom of the nationals of other Member States to move and reside in the territory of the Member States (see, to that effect, judgments of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 32, and of 10 April 2018, *Pisciotti*, C-191/16, EU:C:2018:222, paragraph 44).

40 It follows that, in a situation such as that in the main proceedings, the unequal treatment involved in permitting the extradition of a Union citizen who is a national of a Member State other than the requested Member State gives rise to a restriction on the freedom to move and reside in the territory of the Member States, within the meaning of Article 21 TFEU (see, to that effect, judgments of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 33, and of 10 April 2018, *Pisciotti*, C-191/16, EU:C:2018:222, paragraph 45).

41 Such a restriction can be justified only where it is based on objective considerations and is proportionate to the legitimate objective of the provisions of national law (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 34).

42 In that context, the Court has recognised that the objective of averting the risk that persons who have committed an offence should go unpunished must be considered a legitimate objective and may justify a measure that restricts a fundamental freedom, such as that laid down in Article 21 TFEU, provided that that measure is necessary for the protection of the interests that it is intended to secure and only in so far as those objectives cannot be attained by less restrictive measures (see, to that effect, judgments of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 37 and 38; of 10 April 2018, *Pisciotti*, C-191/16, EU:C:2018:222, paragraphs 47 and 48; and of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 60).

43 In that regard, the Court has held that the exchange of information with the Member State of which the person requested for extradition is a national must be given priority, in order, where relevant, to afford the authorities of that Member State the opportunity to issue a European arrest

warrant for the purposes of prosecution. Accordingly, where another Member State, in which that person lawfully resides, is sent an extradition request by a third State, that Member State is obliged to inform the Member State of which that person is a national and, where appropriate, if the latter Member State so requests, to surrender that person to it, in accordance with the provisions of Framework Decision 2002/584, provided that the latter Member State has jurisdiction, under its national law, to prosecute the requested person for offences committed outside its national territory (see, to that effect, judgments of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 48 and 50; of 10 April 2018, *Pisciotti*, C-191/16, EU:C:2018:222, paragraph 51; and of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 70).

44 Further, in order to protect the objective of averting the risk that the requested person should go unpunished for the offences he or she is alleged in the extradition request to have committed, the European arrest warrant that may be issued by the Member State of which that person is a national must relate, at least, to the same offences as those of which that person is accused in the extradition request (see, to that effect, judgment of 10 April 2018, *Pisciotti*, C-191/16, EU:C:2018:222, paragraph 54).

45 On the other hand, where a European arrest warrant is not issued by the Member State of which the requested person is a national, the requested Member State may carry out his or her extradition, provided that it has verified, as required by the Court's case-law, that that extradition will not prejudice the rights referred to in Article 19 of the Charter of Fundamental Rights of the European Union (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 60).

46 Those considerations must guide the Court when, in the second place, it offers clarification, having regard to the concerns expressed by the referring court, in relation to the implementation of the exchange of information mentioned in paragraph 43 of the present judgment.

47 In that regard, it follows, in essence, from paragraphs 55 and 56 of the judgment of 10 April 2018, *Pisciotti* (C-191/16, EU:C:2018:222), that the requested Member State fulfils its obligation to provide information, referred to in paragraph 43 of the present judgment, by putting the competent authorities of the Member State of which the requested person is a national in a position to request the surrender of that person by means of a European arrest warrant.

48 To that end, in accordance with the principle of sincere cooperation, laid down in the first subparagraph of Article 4(3) TEU, which provides that the Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 42), it is incumbent on the requested Member State to inform the competent authorities of the Member State of which the requested person is a national not only of the existence of an extradition request concerning that person, but also of all the matters of fact and law communicated by the third State requesting extradition in the context of that extradition request, though those authorities are bound to respect the confidentiality of such matters where confidentiality has been sought by that third State, that State being kept duly informed on that point. Further, it is also incumbent on the requested Member State to keep those authorities informed of any changes in the situation of the requested person that might be relevant to the possibility of a European arrest warrant being issued with respect to that person, in accordance with what has been stated in paragraphs 43 and 44 of the present judgment.

49 On the other hand, neither the requested Member State nor the Member State of which the requested person is a national can be obliged, under EU law, to make an application to the third State that is requesting extradition for the transmission of the criminal investigation file.

50 In addition to the fact that there is no legal basis in EU law, as it currently stands, for such an obligation, it would also be incompatible with the objectives which underlie the exchange of information referred to in paragraph 43 of the present judgment, in so far as, in accordance with the Court's case-law, that exchange of information serves the objective of safeguarding Union citizens from measures liable to deprive them of the rights of free movement and residence laid down in Article 21 TFEU while ensuring that criminal offences do not go unpunished (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 47).

51 If the requested Member State or the Member State of which the requested person is a national were obliged to ask the third State requesting extradition to send the criminal investigation file, the extradition procedure might become appreciably more complicated and its duration might be significantly extended, at the risk of jeopardising, ultimately, the objective of ensuring that criminal offences do not go unpunished.

52 Further, it must be noted that the case-law cited in paragraph 43 of the present judgment is based on the premiss that the Member State of which the requested person is a national should itself assess whether it is appropriate to issue a European arrest warrant when it is informed, by the requested Member State, of the existence of an extradition request concerning one of its nationals. Similarly, it must be held that any decision by the Member State of which the requested person is a national to ask the third State requesting extradition to send the criminal investigation file, to permit an assessment of the appropriateness of any prosecution, is a matter that is within the discretion of that Member State, as an element of its sovereignty in criminal matters, and in accordance with the rules of its national law.

53 It follows from the foregoing that, provided that the authorities of the requested Member State have duly informed the authorities of the Member State of which the requested person is a national, in accordance with what has been said in paragraph 48 of the present judgment, those authorities may continue the extradition procedure and, where appropriate, carry out the extradition of that person where a European arrest warrant has not been issued by the Member State of which that person is a national within a reasonable time, taking account of all the circumstances of the case.

54 In such a scenario, the requested Member State may therefore carry out that extradition without being obliged to wait, for longer than such a reasonable time, for the Member State of which the requested person is a national to adopt a formal decision waiving the right to issue a European arrest warrant in respect of that person. To adopt the opposite approach would exceed what is required by the implementation of the existing cooperation and mutual assistance mechanisms in criminal matters under EU law and would be likely to delay unduly the extradition procedure.

55 In that respect, it is for the requested Member State, in the interests of legal certainty, to set, for the Member State of which the requested person is a national, a reasonable time limit on the expiry of which, if the latter Member State has not issued a European arrest warrant, the extradition of that person will, if appropriate, be carried out. Such a time limit must be set taking account of all the circumstances of the case, including whether that person may be in custody on the basis of the extradition procedure and the complexity of the case.

56 In the light of the foregoing, the answer to the second question is that Articles 18 and 21 TFEU must be interpreted as meaning that, where the Member State of which the requested person is a national, that person being a Union citizen who is the subject of an extradition request sent, by a third State, to another Member State, has been informed by that other Member State of the existence of the request, neither of those Member States is obliged to ask the third State requesting extradition to send to them a copy of the criminal investigation file in order to enable the Member State of which that person is a national to assess the possibility that it might itself conduct a criminal prosecution of that person. Provided that it has duly informed the Member State of which that person is a national of the existence of the extradition request, of all the elements of fact and law communicated by the third State requesting extradition within the framework of that request, and of any changes in the situation of the requested person that might be relevant to the possibility of issuing a European arrest warrant with respect to him or her, the requested Member State may extradite that person without being obliged to wait for the Member State of which that person is a national to waive, by a formal decision, the issue of such an arrest warrant, concerning, at least, the same offences as those referred to in the extradition request, where the latter Member State fails to issue such an arrest warrant before the expiry of a reasonable time limit imposed on it for that purpose by the requested Member State, taking into consideration all the circumstances of the case.

The third question

57 By its third question, the referring court seeks, in essence, to ascertain whether Articles 18 and 21 TFEU must be interpreted as meaning that the Member State which must consider an extradition request made to it by a third State for the purposes of criminal prosecution of a Union citizen, who is a national of another Member State, is obliged to refuse extradition and itself to conduct the criminal prosecution where its national law permits it to do so.

58 It must be recalled that extradition is a procedure whose aim is to ensure that a person who is present in a territory other than that in which he or she has allegedly committed an offence does not go unpunished. Although, in the light of the maxim *aut dedere*, *aut judicare* (either extradite or prosecute), the non-extradition of own nationals is generally counterbalanced by the possibility that the requested Member State may prosecute its own nationals for serious offences committed outside its territory, that Member State as a general rule has no jurisdiction to try cases concerning such offences when neither the perpetrator nor the victim of the alleged offence is a national of that Member State. Extradition thus ensures that offences committed in the territory of a State by persons who have fled that territory do not remain unpunished (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 39).

59 In that context, the Court has held that national rules which allow an extradition request to be granted for the purposes of prosecution and judgment in a third State where the offence is alleged to have been committed appear appropriate to achieve the objective pursued, provided that there is no alternative measure that is less prejudicial to the exercise of the rights conferred by Article 21 TFEU (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 40 and 41).

60 In this instance, however, the context of the question submitted by the referring court differs from that set out in paragraph 58 of the present judgment, in that the national law of the requested Member State permits that Member State to prosecute a foreign national for offences committed outside its territory. Thus, that court states that Paragraph 7(2) of the Criminal Code provides that the German authorities responsible for the conduct of criminal prosecutions have a subsidiary jurisdiction with respect to the prosecution of offences committed abroad where extradition is not possible, including where those offences were committed by a foreign national.

61 The German Government argues that the referring court's interpretation of Paragraph 7(2)(2) of the Criminal Code is not well founded. In the opinion of that government, the subsidiary jurisdiction there provided for is applicable only if the third State requesting extradition cannot or does not wish to conduct a prosecution. That, it is argued, is not the situation in the main proceedings, and consequently that provision does not permit the conduct of any prosecution of BY in Germany.

62 In that regard, it should be recalled that, as far as the interpretation of provisions of national law is concerned, the Court is in principle required to rely on the description given in the order for reference. According to settled case-law, the Court does not have jurisdiction to interpret the internal law of a Member State (judgment of 7 August 2018, *Banco Santander and Escobedo Cortés*, C-96/16 and C-94/17, EU:C:2018:643, paragraph 57 and the case-law cited).

63 Consequently, the third question must be examined on the basis of the interpretation of Paragraph 7(2) of the Criminal Code as set out in the request for a preliminary ruling. It is, if appropriate, for the referring court to verify whether that interpretation is well founded.

64 That said, it must be held that Articles 18 and 21 TFEU cannot be interpreted as meaning that the requested Member State is obliged to refuse the extradition of a Union citizen who is a national of another Member State, and itself to conduct a criminal prosecution of that person for offences committed in a third State, where the national law of the requested Member State empowers that Member State to prosecute that Union citizen for certain offences committed in a third State.

65 In such a situation, if there were an obligation on the requested Member State to refuse extradition and itself to conduct a criminal prosecution, the consequence would be that that Member State would be deprived of the opportunity to decide itself on the appropriateness of conducting a prosecution of that citizen on the basis of national law, in the light of all the circumstances of the particular case, including the prospect of that prosecution resulting in a conviction, taking account of the evidence available. Accordingly, such an obligation would go beyond the limits that EU law may impose on the exercise of the discretion enjoyed by that Member State with respect to whether or not prosecution is appropriate in an area such as criminal law which falls, in accordance with the Court's settled case-law, within the competence of the Member States, even though they must exercise that competence with due regard for EU law (see, to that effect, judgment of 26 February 2019, *Rimšēvičs and ECB* v *Latvia*, C-202/18 and C-238/18, EU:C:2019:139, paragraph 57).

66 It follows that, where, as in the main proceedings, the requested Member State has been sent, by a third State, a request for the extradition of a Union citizen who is a national of another Member State, for the purposes of a criminal prosecution, the question of EU law that arises is solely whether the requested Member State is able to adopt a course of action, with respect to that Union citizen, which would be less prejudicial to the exercise of that citizen's right to free movement and residence by considering that he or she should be surrendered to the Member State of which he or she is a national rather than extradited to the third State requesting extradition (see, by analogy, judgment of 10 April 2018, *Pisciotti*, C-191/16, EU:C:2018:222, paragraph 50).

67 In the light of the foregoing, the answer to the third question is that Articles 18 and 21 TFEU must be interpreted as meaning that the Member State to which a third State submits an extradition request for the purposes of a criminal prosecution of a Union citizen who is a national of another Member State is not obliged to refuse extradition and itself to conduct a criminal prosecution where its national law permits it to do so.

Costs

68 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Articles 18 and 21 TFEU must be interpreted as being applicable to the situation of a citizen of the European Union who is a national of one Member State, who is residing in the territory of another Member State and who is the subject of an extradition request sent to the latter Member State by a third State, even where that citizen moved the centre of his or her interests to that other Member State at a time when he or she did not have Union citizenship.**

2. **Articles 18 and 21 TFEU must be interpreted as meaning that, where the Member State of which the person requested for extradition is a national, that person being a Union citizen who is the subject of an extradition request sent, by a third State, to another Member State, has been informed by that other Member State of the existence of the request, neither of those Member States is obliged to ask the third State requesting extradition to send to them a copy of the criminal investigation file in order to enable the Member State of which that person is a national to assess the possibility that it might itself conduct a criminal prosecution of that person. Provided that it has duly informed the Member State of which that person is a national of the existence of the extradition request, of all the elements of fact and law communicated by the third State requesting extradition within the framework of that request, and of any changes in the situation of the requested person that might be relevant to the possibility of issuing a European arrest warrant with respect to him or her, the Member State from which extradition is requested may extradite that person without being obliged to wait for the Member State of which that person is a national to waive, by a formal decision, the issue of such an arrest warrant, concerning, at least, the same offences as those referred to in the extradition request, where the latter Member State fails to issue such an arrest warrant before the expiry of a reasonable time limit imposed on it for that purpose by the Member State from which extradition is requested, taking into consideration all the circumstances of the case.**

3. **Articles 18 and 21 TFEU must be interpreted as meaning that the Member State to which a third State submits an extradition request for the purposes of a criminal prosecution of a Union citizen who is a national of another Member State is not obliged to refuse extradition and itself to conduct a criminal prosecution where its national law permits it to do so.**

[Signatures]

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* Language of the case: German.