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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

10 April 2018 (*)

(Reference for a preliminary ruling — Citizenship of the Union — Articles 18 and 21 TFEU — Extradition to the United States of America of a national of a Member State who has exercised his right to freedom of movement — Extradition agreement between the European Union and that third State — Scope of EU law — Prohibition on extradition applied only to own nationals — Restriction on free movement — Justification based on the prevention of impunity — Proportionality — Informing the Union citizen's Member State of origin)

In Case C-191/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Berlin (Regional Court, Berlin, Germany), made by decision of 18 March 2016, received at the Court on 5 April 2016, in the proceedings

Romano Piscioti

v

Bundesrepublik Deutschland,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz, J.L. da Cruz Vilaça, J. Malenovský, E. Levits and C.G. Fernlund (Rapporteur), Presidents of Chambers, A. Borg Barthet, J.-C. Bonichot, S. Rodin, F. Biltgen, K. Jürimäe, C. Lycourgos and M. Vilaras, Judges,

Advocate General: Y. Bot,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 12 July 2017,

after considering the observations submitted on behalf of:

- Mr Piscioti, by R. Karpenstein, Rechtsanwalt,
- the German Government, by T. Henze and M. Hellmann, acting as Agents, and by F. Fellenberg, Rechtsanwalt,
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- Ireland, by M. Browne, L. Williams, E. Creedon and A. Joyce, acting as Agents, and by M. Gray, Barrister,
- the Hungarian Government, by M.M. Tátrai and M.Z. Fehér, acting as Agents,
- the Netherlands Government, by M.K. Bulterman, M.A.M. de Ree and M. Gijzen, acting as Agents,
- the Austrian Government, by G. Eberhard, acting as Agent,
- the Polish Government, by B. Majczyna, M. Nowak and K. Majcher, acting as Agents,
- the European Commission, by R. Troosters and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 November 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the first paragraph of Article 18 TFEU.

2 The request has been made in proceedings between Mr Romano Piscioti, an Italian national, and the Bundesrepublik Deutschland (Federal Republic of Germany) concerning a request for Mr Piscioti's extradition which the United States of America had addressed to that Member State.

Legal framework

European Union law

The EU-USA Agreement

3 Article 1 of the Agreement on extradition between the European Union and the United States of America of 25 June 2003 (OJ 2003 L 181, p. 27, 'the EU-USA Agreement') states:

'The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation in the context of applicable extradition relations between the Member States and the United States of America governing extradition of offenders.'

4 Article 10 of the EU-USA Agreement, headed ‘Requests for extradition or surrender made by several States’ provides:

‘1. If the requested State receives requests from the requesting State and from any other State or States for the extradition of the same person, either for the same offence or for different offences, the executive authority of the requested State shall determine to which State, if any, it will surrender the person.

2. If a requested Member State receives an extradition request from the United States of America and a request for surrender pursuant to the European arrest warrant for the same person, either for the same offence or for different offences, the competent authority of the requested Member State shall determine to which State, if any, it will surrender the person. For this purpose, the competent authority shall be the requested Member State’s executive authority if, under the bilateral extradition treaty in force between the United States and the Member State, decisions on competing requests are made by that authority; if not so provided in the bilateral extradition treaty, the competent authority shall be designated by the Member State concerned pursuant to Article 19.

3. In making its decision under paragraphs 1 and 2, the requested State shall consider all of the relevant factors, including, but not limited to, factors already set forth in the applicable extradition treaty, and, where not already so set forth, the following:

- (a) whether the requests were made pursuant to a treaty;
- (b) the places where each of the offences was committed;
- (c) the respective interests of the requesting States;
- (d) the seriousness of the offences;
- (e) the nationality of the victim;
- (f) the possibility of any subsequent extradition between the requesting States; and
- (g) the chronological order in which the requests were received from the requesting States.’

5 Article 17 of the EU-USA Agreement, headed ‘Non-derogation’, provides:

‘1. This Agreement is without prejudice to the invocation by the requested State of grounds for refusal relating to a matter not governed by this Agreement that is available pursuant to a bilateral extradition treaty in force between a Member State and the United States of America.

2. Where the constitutional principles of, or final judicial decisions binding upon, the requested State may pose an impediment to fulfilment of its obligation to extradite, and resolution of the matter is not provided for in this Agreement or the applicable bilateral treaty, consultations shall take place between the requested and requesting States.’

Framework Decision 2002/584/JHA

6 EU rules relating to the area of freedom, security and justice include 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).

German Law

The Basic Law

7 Article 16(2) of the Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany) of 23 May 1949 (BGBl 1949, p. 1), in the version applicable at the material time ('the Basic Law'), provides:

'No German may be extradited to a foreign country. The law may provide otherwise for extraditions to a Member State ... or to an international court of justice provided that the rule of law is upheld.'

The Germany-United States Extradition Treaty

8 Article 7(1) of the Auslieferungsvertrag zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika (Extradition Treaty between the Federal Republic of Germany and the United States of America) of 20 June 1978 (BGBl. 1980 II, pp. 646, 'the Germany-United States Extradition Treaty') provides:

'Neither of the Contracting Parties shall be bound to extradite its own nationals. ...'

The IRG

9 Paragraph 12 of the Gesetz über die internationale Rechtshilfe in Strafsachen (Law on international cooperation in criminal matters) of 23 December 1982 (BGBl.1982 I, p. 2071, 'the IRG'), headed 'Authorising extradition', provides, in the version applicable at the material time:

'... extradition may not be granted unless a court has declared it to be permissible.'

10 Paragraph 13(1) of the IRG, headed 'Jurisdiction *ratione materiae*', provides:

'1. ... the Oberlandesgericht [Higher Regional Court, Germany] shall have jurisdiction. The decision of the Oberlandesgericht [Higher Regional Court] shall not be subject to appeal ...'

11 Under Paragraph 23 of the IRG, headed 'Decision on objections raised by the person sought':

'The Oberlandesgericht [Higher Regional Court] shall rule on any objections raised by the person sought against the extradition arrest warrant or against its execution.'

12 Paragraph 74(1) of the IRG provides:

'Incoming requests for mutual legal assistance and the submission of requests for mutual legal assistance to other States shall be adjudicated upon by the Federal Ministry of Justice and Consumer Protection in agreement with the Ministry of Foreign Affairs and any other federal ministries within whose remit the legal assistance falls. ...'

The Criminal Code

13 Paragraph 7(2) of the Strafgesetzbuch (Criminal Code, BGBl. 1998 I, p. 3322) provides that German criminal law is applicable to an offence committed outside Germany where the offence is punishable under criminal law in the State where it was committed, or where the place where the offence was committed does not fall under any territorial jurisdiction, and where, at the time of the

offence, the perpetrator was a foreign national, was apprehended in national territory and, although extraditable under extradition law for the type of offence concerned, is not extradited because an extradition request is not made within a reasonable period, or is rejected or extradition itself cannot be implemented.

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

14 Mr Piscioti is an Italian national. He had been under investigation in the United States since 2007 for his participation in anticompetitive concerted practices and agreements in the United States and the United States authorities had requested his extradition for the purposes of prosecution.

15 On 26 August 2010, an arrest warrant was issued against him by the District Court for the Southern District of Florida in Fort Lauderdale (United States) and a bill of indictment was returned by the Grand Jury of that court. Mr Piscioti was charged with having taken part in a working group of marine hose manufacturer sales representatives who had distorted competition by sharing out the market for the sale of marine hoses in the State of Florida (United States) and elsewhere between 1999 and late 2006.

16 On 17 June 2013, when his flight from Nigeria to Italy made a stopover at Frankfurt am Main airport (Germany), Mr Piscioti was arrested by German federal police officers.

17 On 18 June 2013, Mr Piscioti was brought before the Amtsgericht Frankfurt am Main (District Court, Frankfurt am Main, Germany) in order for a decision to be made in relation to the request by the United States of America for his extradition. Mr Piscioti expressed his opposition to extradition by the simplified informal procedure.

18 Pursuant to an order of the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main, Germany) of 24 June 2013, Mr Piscioti was provisionally detained pending extradition. On 7 August 2013, the United States of America sent a formal request for extradition to the Federal Republic of Germany.

19 On 16 August 2013, the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main) ordered that the provisional detention of Mr Piscioti pending extradition be extended by way of formal detention for the purposes of extradition.

20 By order of 22 January 2014, the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main) declared the request for Mr Piscioti's extradition to be permissible.

21 On 6 February 2014, Mr Piscioti made an application to the Bundesverfassungsgericht (Federal Constitutional Court, Germany) for interim measures to prevent enforcement of the order of the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main) of 22 January 2014. The Bundesverfassungsgericht (Federal Constitutional Court) dismissed that application by order of 17 February 2014.

22 By letter of 26 February 2014, Mr Piscioti submitted to the Bundesministerium der Justiz (Federal Ministry of Justice, Germany) that his extradition is contrary to EU law in that a literal interpretation of the first sentence of Article 16(2) of the Basic Law, confining its application to German nationals, infringes the general prohibition on discrimination.

23 On 17 March 2014, the Federal Republic of Germany approved the extradition of Mr Piscioti, which took place on 3 April 2014.

24 Also on 17 March 2014, Mr Piscioti brought an action before the Landgericht Berlin (Regional Court, Berlin, Germany) for a declaration that the Federal Republic of Germany was liable for having granted his extradition and for an order requiring that Member State to pay damages.

25 Having pleaded guilty in the criminal proceedings brought against him in the United States, Mr Piscioti was sentenced to a term of two years' imprisonment, reduced by the period of his nine and a half months' detention in Germany, and fined USD 50 000 (approximately EUR 40 818). Mr Piscioti served his prison sentence in the United States until his release on 14 April 2015.

26 The referring court states that, according to the case-law of the Bundesverfassungsgericht (Federal Constitutional Court), the Federal Republic of Germany has an obligation under Article 1(3) and Article 20(3) of the Basic Law to conduct its own review of the legality of a grant of extradition and to honour any commitments that it may have under international law. The referring court adds that the Bundesverfassungsgericht (Federal Constitutional Court) has held, in particular in the case of Mr Piscioti, that the prohibition of discrimination on grounds of nationality referred to in Article 18 TFEU is not applicable to extradition to third States, inasmuch as such matters do not fall within the scope of EU law.

27 The referring court states that, unlike the Bundesverfassungsgericht (Federal Constitutional Court), it considers EU law to be applicable to the present case. It points out that Mr Piscioti exercised his right of free movement under Article 21(1) TFEU by stopping over in Frankfurt am Main during his flight from Nigeria to Italy. Moreover, in its view, his extradition to the United States may also fall within the scope *ratione materiae* of EU law by reason of the EU-USA Agreement.

28 The referring court is uncertain, in that context, whether Article 17(2) of that agreement might nonetheless be interpreted as introducing an exception to the application of EU law and therefore as being such as to justify discrimination based on nationality. It is inclined to the view, however, that such a justification is excluded on the basis of primary EU law.

29 In the event that the Federal Republic of Germany has breached EU law, the referring court seeks to ascertain whether that breach is 'sufficiently serious' to give rise to a right to compensation. It states that it would answer that question in the affirmative on the ground that, in its view, the discretion available to that Member State was, in the present case, considerably reduced, if not non-existent. It nonetheless harbours doubts on that point, in particular, given that there was no case-law of the Court on the matter when the Federal Republic of Germany took its decision.

30 In those circumstances, the Landgericht Berlin (Regional Court, Berlin) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Is extradition between a Member State and a third country a matter which, irrespective of the facts of the individual case, never comes within the material scope of the Treaties, with the result that the EU-law prohibition of discrimination under the first paragraph of Article 18 TFEU is not to be taken into account in the application of a (literally interpreted) rule of constitutional law (in this case, the first sentence of Article 16(2) of the Basic Law), which prohibits extradition only of that Member State's own nationals to third countries?'

(b) If that question is answered in the affirmative, is the first question to be answered differently if the matter of extradition between a Member State and the United States of America is based on the Agreement on extradition between the European Union and the United States of America?

(2) In so far as the applicability of the Treaties with regard to extradition between Member States and the United States of America is not excluded from the outset:

Is the first paragraph of Article 18 TFEU and the case-law of the Court of Justice relating to that provision to be interpreted as meaning that a Member State unjustifiably breaches the prohibition of discrimination under the first paragraph of Article 18 TFEU in the case where, on the basis of a rule of constitutional law (the first sentence of Article 16(2) of the Basic Law), it treats, in the matter of requests for extradition received from third countries, its own nationals and nationals of other ... Member States differently inasmuch as it extradites only the latter?

(3) Should such cases be found to fall foul of the general prohibition of discrimination laid down in the first paragraph of Article 18 TFEU:

Is the case-law of the Court of Justice to be interpreted as meaning that, in a case such as the present — in which, for extradition to be authorised by the competent authority, there must mandatorily be a prior judicial review of its legality, the result of which, however, binds the authority only if that extradition is declared to be impermissible — a mere breach of the prohibition of discrimination under the first paragraph of Article 18 TFEU may itself constitute a serious breach, or must the breach be manifest?

(4) If a manifest breach is not required:

Is the case-law of the Court of Justice to be interpreted as meaning that there is a priori no sufficiently serious breach in a case such as that in the main proceedings, in which, in the absence of case-law of the Court of Justice with regard to the particular type of factual situation at issue (namely, the objective applicability of the general prohibition of discrimination under the first paragraph of Article 18 TFEU to matters relating to extradition between Member States and the United States of America), the highest national executive authority can, in support of its decision, point to the fact that its decision is in line with previous decisions of national courts in the same matter?

Consideration of the questions referred

The first question

31 By its first question, the referring court asks, in essence, whether EU law must be interpreted as meaning that, in a case such as that in the main proceedings, in which a Union citizen who has been the subject of a request for extradition to the United States under the EU-USA Agreement has been arrested, for the purposes of potentially acceding to that request, in a Member State other than the Member State of which he is a national, the situation of that citizen falls within the scope of EU law.

32 In that regard, in so far as a request for extradition, such as that at issue in the main proceedings, is made under the EU-USA Agreement after that agreement entered into force, it must be noted that that agreement is applicable to those proceedings.

33 In addition, it should be noted that, in the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraph 30), concerning a request for extradition 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 TFEU on citizenship of the Union, 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.

34 Accordingly, it must be held, in the light of that judgment, that the situation of a Union citizen such as Mr Piscioti, an Italian national, who has made use of his right to move freely within the European Union by stopping over in Germany during his return journey from Nigeria, falls within the scope of the Treaties, within the meaning of Article 18 TFEU. The fact that, when he was arrested, he was only in transit in Germany is not capable of casting doubt on that finding.

35 Therefore, the answer to the first question referred is that EU law must be interpreted as meaning that, in a case such as that in the main proceedings, in which a Union citizen who has been the subject of a request for extradition to the United States has been arrested, for the purposes of potentially acceding to that request, in a Member State other than the Member State of which he is a national, the situation of that citizen falls within the scope of EU law since he has made use of his right to move freely within the European Union and the request for extradition was made under the EU-USA Agreement.

The second question

36 By its second question, the referring court asks, in essence, whether, in a case such as that set out in paragraph 35 above, Article 18 TFEU must be interpreted as precluding the requested Member State from drawing a distinction, on the basis of a rule of constitutional law, between its nationals and the nationals of other Member States and from granting extradition of the latter whilst not permitting extradition of its own nationals.

37 The second question must be considered within the context of the EU-USA Agreement.

38 In that regard, the Court notes that the EU-USA Agreement, the purpose of which is, in accordance with Article 1 of that agreement, to enhance cooperation between the European Union and the United States of America in the context of applicable extradition relations between the Member States and that third State governing extradition of offenders, does not address, as such, the issue of a difference in treatment by the requested Member State as between its nationals and nationals of other Member States. In addition, with the exception of Article 13 of that agreement on capital punishment, the agreement itself does not set out any grounds for refusing extradition.

39 However, Article 17(1) of the EU-USA Agreement does expressly provide that a Member State, in its capacity as a requested State, may, pursuant to a bilateral treaty between that State and the United States of America, invoke a ground for refusing extradition relating to a matter not governed by that agreement. In the case of the Germany-United States Extradition Treaty, it should be noted that Article 7(1) thereof allows the contracting parties not to extradite their own nationals.

40 In addition, according to Article 17(2) of the EU-USA Agreement, where the constitutional principles of the requested State may constitute an impediment to fulfilment of its obligation to extradite, and resolution of the issue is not provided for in the EU-USA Agreement or the applicable bilateral treaty, consultations are to take place between the requested and requesting States.

41 In principle, Article 17 of the EU-USA Agreement thus allows a Member State, on the basis either of the provisions of a bilateral treaty or rules of its constitutional law, to provide for a particular outcome for its own nationals by prohibiting their extradition.

42 However, that discretion must still be exercised in accordance with primary law and, in particular, with the rules of the TFEU on equal treatment and the freedom of movement of Union citizens.

43 Accordingly, the application by a Member State, on the basis of Article 17(1) or (2) of the EU-USA Agreement, of a rule refusing extradition laid down in a bilateral treaty between a Member State and the United States of America, such as Article 7(1) of the Germany-United States Extradition Treaty, or of a provision of national law, such as Article 16 of the Basic Law, according to which no German is to be extradited, must comply with the TFEU, in particular with Articles 18 and 21 thereof.

44 In that regard, the Court has held that national rules of a Member State on extradition which give rise to a difference in treatment depending on whether the person concerned is a national of that Member State or a national of another Member State, in so far as they result in nationals of other Member States who have moved to the requested Member State not being granted the protection against extradition enjoyed by nationals of the latter Member State, are liable to affect the freedom of nationals of other Member States to move within the European Union (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 32).

45 It follows that, in a situation such as that at issue in the main proceedings, unequal treatment which allows the extradition of a Union citizen who is a national of a Member State other than the requested Member State, such as Mr Piscioti, gives rise to a restriction of freedom of movement, within the meaning of Article 21 TFEU (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 33).

46 Such a restriction must be based on objective considerations and must be proportionate to the legitimate objective pursued (see, inter alia, judgments of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 83 and the case-law cited, and of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 34).

47 The Court has held that the objective of preventing the risk of impunity for persons who have committed an offence is to be seen in the context of the prevention and combating of crime. That objective must be considered, in the context of the area of freedom, security and justice without internal frontiers referred to in Article 3(2) TEU, to be a legitimate objective of EU law (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 36 and 37 and the case-law cited).

48 However, measures which restrict a fundamental freedom, such as that laid down in Article 21 TFEU, may be justified by objective considerations only if they are necessary for the protection of the interests which they are intended to secure and only in so far as those objectives cannot be attained by less restrictive measures (judgments of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 88 and the case-law cited, and of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 38).

49 Mr Piscioti claims that since the Federal Republic of Germany provides in its national law, in Paragraph 7(2) of the Criminal Code, for the possibility, where extradition cannot take place, of prosecuting a person from another Member State on its own national territory, it was incumbent on

the Federal Republic of Germany to apply that less restrictive solution, and not to extradite him. The German Government, however, disputes the interpretation of the provision on which that line of argument is based.

50 In the present case, however, the only question is whether the Federal Republic of Germany could adopt a course of action with regard to Mr Piscioti which would be less prejudicial to the exercise of his right to free movement by considering surrendering him to the Italian Republic rather than extraditing him to the United States of America.

51 In that regard, the Court has held that the exchange of information with the Member State of which the person concerned 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. Thus, when a Member State to which a Union citizen who is a national of another Member State has moved receives an extradition request from a third State with which the former Member State has concluded an extradition agreement, it must inform the Member State of which the citizen in question is a national and, should that Member State so request, surrender that citizen to it, in accordance with the provisions of Framework Decision 2002/584, provided that that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 48 and 50).

52 Although that solution was adopted, as appears from paragraph 46 of the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), in a context characterised by the absence of an international agreement on extradition between the European Union and the third State in question, it may be applied in a situation such as that at issue in the main proceedings, in which the EU-USA Agreement gives the requested Member State the option of not extraditing its own nationals.

53 That conclusion cannot be called into question by the argument, put forward by some of the governments which have submitted observations, that, in essence, the priority given to a request for surrender pursuant to a European arrest warrant over a request for extradition issued by the United States of America would undermine the effectiveness of the rule, in Article 10(2) and (3) of the EU-USA Agreement, that the competent authority of the requested Member State, in the event of such alternatives, is to determine to which State it will surrender the person on the basis of all of the relevant factors.

54 Indeed, there is nothing inevitable in the possibility that the cooperation mechanism set out in paragraph 51 above might preclude a request for extradition to a third State by giving priority to a European arrest warrant, on the ground that this would be less prejudicial to the exercise of the right to freedom of movement (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 49). Thus, in order to safeguard the objective of preventing the risk of impunity for the person concerned in respect of the offences alleged against him in the request for extradition, a European arrest warrant issued by a Member State other than the requested Member State must, at least, relate to the same offences and, as appears from paragraph 50 of the judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630), the issuing Member State must have jurisdiction, pursuant to national law, to prosecute that person for such offences, even if committed outside its territory.

55 In the present case, as the Advocate General stated in point 52 of his Opinion, it is clear from the case file before the Court, and from the hearing, that the consular authorities of the Italian Republic were kept informed of Mr Piscioti's situation before the request for extradition at issue in

the main proceedings was granted and that the Italian judicial authorities did not issue a European arrest warrant in respect of Mr Piscioti.

56 The answer to the second question is therefore that in a case, such as that in the main proceedings, in which a Union citizen who has been the subject of a request for extradition to the United States under the EU-USA Agreement has been arrested in a Member State other than the Member State of which he is a national, for the purposes of potentially acceding to that request, Articles 18 and 21 TFEU must be interpreted as not precluding the requested Member State from drawing a distinction, on the basis of a rule of constitutional law, between its nationals and the nationals of other Member States and from granting that extradition whilst not permitting extradition of its own nationals, provided that the requested Member State has already put the competent authorities of the Member State of which the citizen is a national in a position to seek the surrender of that citizen pursuant to a European arrest warrant and the latter Member State has not taken any action in that regard.

The third and fourth questions

57 In the light of the answer to the second question, there is no need to answer the third and fourth questions.

Costs

58 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. EU law must be interpreted as meaning that in a case, such as that in the main proceedings, in which a Union citizen who has been the subject of a request for extradition to the United States of America has been arrested, for the purposes of potentially acceding to that request, in a Member State other than the Member State of which he is a national, the situation of that citizen falls within the scope of EU law, since he has made use of his right to move freely within the European Union and the request for extradition was made under the Agreement on extradition between the European Union and the United States of America of 25 June 2003.**
- 2. In a case, such as that in the main proceedings, in which a Union citizen who has been the subject of a request for extradition to the United States of America under the Agreement on extradition between the European Union and the United States of America of 25 June 2003 has been arrested in a Member State other than the Member State of which he is a national, for the purposes of potentially acceding to that request, Articles 18 and 21 TFEU must be interpreted as not precluding the requested Member State from drawing a distinction, on the basis of a rule of constitutional law, between its nationals and the nationals of other Member States and from granting that extradition whilst not permitting extradition of its own nationals, provided that the requested Member State has already put the competent authorities of the Member State of which the citizen is a national in a position to seek the surrender of that citizen pursuant to a European arrest warrant and the latter Member State has not taken any action in that regard.**

[Signatures]

* Language of the case: German.
