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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

22 December 2022 (*)

(Reference for a preliminary ruling – Citizenship of the European Union – Articles 18 and 21 TFEU – Request sent to a Member State by a third State for the extradition of a Union citizen who is a national of another Member State and who has exercised his right to free movement in the first of those Member States – Request made for the purpose of enforcing a custodial sentence – Prohibition on extradition applied solely to own nationals – Restriction of freedom of movement – Justification based on the prevention of impunity – Proportionality)

In Case C-237/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht München (Higher Regional Court, Munich, Germany), made by decision of 9 April 2021, received at the Court on 13 April 2021, in the proceedings relating to the extradition of

S.M.

other party:

Generalstaatsanwaltschaft München,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, K. Jürimäe (Rapporteur), E. Regan, P.G. Xuereb, L.S. Rossi, Presidents of Chambers, M. Ilešič, I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl, I. Ziemele, J. Passer and O. Spineanu-Matei, Judges,

Advocate General: J. Richard de la Tour,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 26 April 2022,

after considering the observations submitted on behalf of:

- Generalstaatsanwaltschaft München, by J. Ettenhofer and F. Halabi, acting as Agents,
 - the German Government, by J. Möller and M. Hellmann, acting as Agents,
 - the Czech Government, by A. Edelmannová, M. Smolek and J. Vlácil, acting as Agents,
 - the Spanish Government, by L. Aguilera Ruiz, acting as Agent,
 - the Croatian Government, by G. Vidović Mesarek, acting as Agent,
 - the Lithuanian Government, by K. Dieninis and R. Dzikovič, acting as Agents,
 - the Polish Government, by B. Majczyna, acting as Agent,
 - the European Commission, by L. Baumgart, S. Grünheid and H. Leupold, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 14 July 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 18 and 21 TFEU.

2 The request has been made in the context of an extradition request, sent by the authorities of Bosnia and Herzegovina to the authorities of the Federal Republic of Germany, in respect of S.M., who has Croatian, Bosnian and Serbian nationality, for the purpose of enforcing a custodial sentence.

Legal context

The 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'), states:

'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, entitled '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 The Federal Republic of Germany made a declaration pursuant to Article 6(1)(b) of the European Convention on Extradition at the time of deposit of the instrument of ratification, on 2 October 1976, 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 (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.’

The Convention on the Transfer of Sentenced Persons

6 Under Article 2 of the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons (‘the Convention on the Transfer of Sentenced Persons’), persons sentenced in the territory of a State signatory to that convention (the sentencing State) may be transferred to the territory of their country of origin (the administering State) in order to serve the sentence imposed on them. In that case, under Article 9(1)(b) of that convention, a sanction prescribed by the law of the administering State for the same offence may be substituted for the sanction imposed in the sentencing State.

7 According to the recitals of that convention, the objective of such a transfer is, in particular, to further the social rehabilitation of sentenced persons by allowing foreigners who are deprived of their liberty as a result of their commission of a criminal offence to serve their sentences within their own society.

8 The Convention on the Transfer of Sentenced Persons has been binding on all the Member States of the European Union since 1 November 1995. That convention, which is also binding on Bosnia and Herzegovina, entered into force in Germany on 1 February 1992.

German law

9 Article 16(2) of the Basic Law for the Federal Republic of Germany provides:

‘No German may be extradited to a foreign country. The law may provide otherwise for extraditions to a Member State of the European Union or to an international court, provided that the rule of law is observed.’

10 Article 116(1) of the Basic Law for the Federal Republic of Germany states:

‘Unless otherwise provided by a law, a “German” within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich

within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person.’

11 Paragraph 48 of the Gesetz über die internationale Rechtshilfe in Strafsachen (Law on international mutual assistance in criminal matters) of 23 December 1982 (BGBl. 1982 I, p. 2071), in the version applicable to the facts in the main proceedings (‘the IRG’), provides:

‘Mutual legal assistance may be provided in criminal proceedings by way of enforcement of a sentence or any other penalty imposed abroad by a final judgment. ...’

12 In accordance with Paragraphs 54 and 55 of the IRG, in so far as enforcement of the foreign judgment in Germany is authorised, the penalty imposed is to be converted into the penalty under German law which most closely corresponds to it and the foreign judgment is to be declared enforceable. Under Paragraph 57(1) of the IRG, the penalty is to be enforced by the German public prosecutor’s office ‘in so far as the foreign State consents to enforcement’.

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

13 On 5 November 2020, the authorities of Bosnia and Herzegovina requested that the Federal Republic of Germany extradite S.M., who has Croatian, Bosnian and Serbian nationality, for the purpose of enforcing a six-month custodial sentence for corruption that was imposed on him by a judgment of the municipal court of Bosanska Krupa (Bosnia and Herzegovina) of 24 March 2017. S.M. has lived in Germany with his wife since mid-2017. He has been working there since 22 May 2020 and was released after being temporarily detained pending extradition.

14 The German authorities informed the Croatian authorities of the extradition request relating to S.M. but received no response.

15 The Generalstaatsanwaltschaft München (Munich Public Prosecutor’s Office, Germany) applied, referring to the judgment of 13 November 2018, *Raugevicius* (C-247/17, EU:C:2018:898; ‘the judgment in *Raugevicius*’), for the extradition of S.M. to be declared inadmissible.

16 According to the Oberlandesgericht München (Higher Regional Court, Munich, Germany), the referring court in this case, the validity of the application by the Munich Public Prosecutor’s Office depends on whether Articles 18 and 21 TFEU are to be interpreted as providing for the non-extradition of a Union citizen even if, under the international treaties, the requested Member State is required to extradite him or her.

17 It considers that that question was not answered in the judgment in *Raugevicius* since, in the case which gave rise to that judgment, the Republic of Finland was authorised, under the international treaties applicable, not to extradite the Lithuanian national in question to the Russian Federation.

18 Similarly, according to the referring court, the specific extradition agreements or the European Convention on Extradition at issue in the cases that gave rise to the judgments of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630); of 10 April 2018, *Pisciotti* (C-191/16, EU:C:2018:222); and of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)* (C-398/19, EU:C:2020:1032), left it to the requested Member State to decide to which of the requesting States the person being prosecuted was to be extradited. Surrender to the Member State of origin of the Union citizen who was the subject of a criminal prosecution would have been

possible in those cases without the Member States concerned being in breach of their obligations towards the third countries concerned under international law.

19 In the present case, however, the Federal Republic of Germany is under an obligation to Bosnia and Herzegovina to extradite S.M. pursuant to Article 1 of the European Convention on Extradition.

20 In accordance with that provision, the Federal Republic of Germany and Bosnia and Herzegovina are required to surrender to each other all persons who are wanted by the judicial authorities of the requesting State for the carrying out of a sentence, provided that the conditions laid down in that convention are satisfied and that there is no exception under any other provision of that convention.

21 In the present case, according to the referring court the conditions laid down in that convention for the extradition of S.M. have been satisfied and there is no obstacle to his extradition under the relevant provisions of the European Convention on Extradition. In particular, that extradition and the acts on which it is based meet the minimum standards under international law applicable in the Federal Republic of Germany and do not infringe mandatory constitutional principles or the mandatory level of protection of fundamental rights.

22 In the view of the referring court, there is, therefore, uncertainty as to whether the case-law resulting from the judgment in *Raugevicius* applies to a case such as that in the main proceedings.

23 In that regard, it points out that, according to the Court's case-law, the lack of equal treatment resulting from the fact that a Union citizen who is a national of a Member State other than the requested Member State may be extradited, but a national of the requested Member State may not, constitutes a restriction on the right to move and reside freely within the territory of the Member States that is provided for in Article 21 TFEU.

24 Such a restriction is justified only if it is based on objective considerations and if it is proportionate to the legitimate aim pursued by the requested Member State. The Court has recognised in that regard that preventing the risk of impunity for persons who have committed an offence must be regarded as a legitimate aim which may, in principle, justify a restrictive measure such as extradition.

25 According to the referring court, the question whether the need to contemplate measures that are less restrictive than extradition may mean that the requested Member State infringes its obligations under international law has not been addressed in the Court's case-law.

26 Lastly, the referring court states that the custodial sentence imposed by the municipal court of Bosanska Krupa could be enforced in the Federal Republic of Germany. Since S.M. is already in Germany, the Convention on the Transfer of Sentenced Persons, which both the Federal Republic of Germany and Bosnia and Herzegovina have ratified, would not be relevant. The enforcement of the sentence would thus be governed by German law, which does not require the person being prosecuted to have German nationality or to give his or her consent. However, such enforcement is possible only if, and to the extent to which, the sentencing State consents to it. That is not the case here, since the Bosnian authorities have requested that S.M. be extradited and not that responsibility for enforcement of that sentence be assumed by the German authorities.

27 In those circumstances, the Oberlandesgericht München (Higher Regional Court, Munich) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Do the principles governing the application of Articles 18 and 21 TFEU established by the Court in [the judgment in *Raugevicius*] require that a request from a third [State] under the [European Convention on Extradition] seeking the extradition of a [Union] citizen for the purpose of enforcing a sentence is to be refused, even where the requested Member State is obliged by international law under that Convention to extradite the [Union] citizen, because it has defined the term “nationals” within the meaning of Article 6(1)(b) of [that] Convention as meaning that it refers only to its own nationals, not to other [Union] citizens?’

Consideration of the question referred

28 By its question, the referring court asks, in essence, whether, where a request for extradition has been made to a Member State by a third State for the purpose of enforcing a custodial sentence imposed on a national of another Member State residing permanently in the first Member State, the national law of which prohibits only the extradition of its own nationals out of the European Union and makes provision for the possibility that that sentence may be enforced in its territory provided that the third State consents to it, Articles 18 and 21 TFEU must be interpreted as precluding that first Member State from extraditing that Union citizen, in accordance with its obligations under an international convention, if it cannot actually assume responsibility for enforcing that sentence in the absence of such consent.

29 In the first place, it should be recalled that, like the case in the main proceedings, the judgment in *Raugevicius* concerned an extradition request from a third State with which the European Union had not concluded an extradition agreement. The Court held, in paragraph 45 of that judgment, that although, in the absence of EU legal provisions on the extradition of nationals of Member States to third States, Member States have the power to adopt such provisions, those Member States are required to exercise that power in accordance with EU law, in particular, the prohibition on discrimination laid down in Article 18 TFEU and the right to move and reside freely within the territory of the Member States guaranteed by Article 21(1) TFEU.

30 By virtue of having Union citizenship, a national of a Member State who is lawfully resident in the territory of another Member State is entitled to rely on Article 21(1) TFEU 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 (judgment of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)*, C-398/19, EU:C:2020:1032, paragraph 30 and the case-law cited).

31 The fact that such a national of a Member State other than the Member State to which an extradition request was submitted also holds the nationality of the third State which made that request cannot prevent that national from asserting the rights and freedoms conferred by Union citizenship, in particular those guaranteed by Articles 18 and 21 TFEU. The Court has repeatedly ruled that holding dual nationality of a Member State and a third State cannot deprive the person concerned of those rights and freedoms (see, to that effect, the judgment in *Raugevicius*, paragraph 29, and judgment of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)*, C-398/19, EU:C:2020:1032, paragraph 32).

32 In the present case, it is apparent from the order for reference that S.M., who holds, inter alia, Croatian nationality, exercised, as a Union citizen, his right under Article 21(1) TFEU to move and

reside freely in another Member State, in this case the Federal Republic of Germany, so that his situation falls within the scope of the Treaties, within the meaning of Article 18 TFEU, notwithstanding that he is also a national of the third State which made the request for his extradition.

33 In the second place, according to the case-law of the Court, a Member State's rules 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, the judgment in *Raugevicius*, paragraph 28, and judgment of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)*, C-398/19, EU:C:2020:1032, paragraph 39 and the case-law cited).

34 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 (the judgment in *Raugevicius*, paragraph 30, and judgment of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)*, C-398/19, EU:C:2020:1032, paragraph 40 and the case-law cited).

35 Such a restriction can be justified only where it is based on objective considerations and is proportionate to the legitimate objective of national law (the judgment in *Raugevicius*, paragraph 31, and judgment of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)*, C-398/19, EU:C:2020:1032, paragraph 41 and the case-law cited).

36 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 (the judgment in *Raugevicius*, paragraph 32, and judgment of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)*, C-398/19, EU:C:2020:1032, paragraph 42 and the case-law cited).

37 In that regard, although the principle *ne bis in idem*, as guaranteed by national law, may be an obstacle to the prosecution by a Member State of persons covered by an extradition request for the purpose of enforcing a sentence, the fact remains that, in order to prevent the risk of such persons going unpunished, there are mechanisms under national law and/or international law which make it possible for those persons to serve their sentences, in particular, in the State of which they are nationals and which thereby increase their chances of social rehabilitation after they have completed their sentences (see, to that effect, the judgment in *Raugevicius*, paragraph 36).

38 That applies, in particular, to the Convention on the Transfer of Sentenced Persons, to which all Member States, as well as Bosnia and Herzegovina, are parties. That convention allows a person who has been sentenced in the territory of a State which is a signatory to that convention to apply under Article 2 thereof to be transferred to the territory of his or her country of origin in order to serve the sentence imposed on him or her, and the recitals of that convention state that the aim of such a transfer is, inter alia, to further the social rehabilitation of sentenced persons by allowing

foreigners who are deprived of their liberty as a result of their commission of a criminal offence to serve their sentences within their own society (see, to that effect, the judgment in *Raugevicius*, paragraph 37 and the case-law cited).

39 In addition, certain Member States, such as the Federal Republic of Germany, provide for the possibility of mutual legal assistance in criminal proceedings by way of enforcement of a sentence handed down abroad.

40 As the Advocate General explained in point 50 of his Opinion, in the case of an extradition request for the purpose of enforcing a custodial sentence, the alternative to extradition, which is less prejudicial to the exercise of the right to free movement and residence of a Union citizen who resides permanently in the requested Member State, is precisely the possibility, where available under the law of the requested Member State, of enforcing that sentence in the territory of that Member State.

41 Furthermore, where that possibility does exist, the Court has held that, in view of the aim of preventing impunity, nationals of the requested Member State, on the one hand, and, on the other, nationals of other Member States who reside permanently in that requested Member State and thus demonstrate a certain degree of integration into that State's society are in a comparable situation (see, to that effect, the judgment in *Raugevicius*, paragraph 46 and the case-law cited).

42 In those circumstances, Articles 18 and 21 TFEU require that nationals of other Member States who reside permanently in the requested Member State and whose extradition is requested by a third State for the purpose of enforcing a custodial sentence should be able to serve their sentence in the territory of that Member State under the same conditions as nationals of that Member State.

43 In the present case, the referring court assumes that S.M., who has lived in the territory of the Federal Republic of Germany with his wife since 2017 and has been working there since 2020, must be regarded as a Union citizen permanently residing in that Member State.

44 In addition, according to the information provided to the Court by the referring court, it is possible for the sentence imposed on S.M. in Bosnia and Herzegovina to be enforced in Germany. In accordance with Paragraph 48 and Paragraph 57(1) of the IRG, a sentence imposed in a third State may be enforced in Germany in so far as that third State consents.

45 According to the referring court, however, in the present case, enforcement of that sentence on German territory would result in the Federal Republic of Germany being in breach of the obligation to extradite to which the requested Member State is subject under the European Convention on Extradition.

46 In that regard, it indicates that the term 'nationals', within the meaning of the European Convention on Extradition, refers, as far as the Federal Republic of Germany is concerned, only to persons holding the nationality of that Member State, in accordance with the declaration it made under Article 6(1)(b) of that convention. In those circumstances, unlike the case which gave rise to the judgment in *Raugevicius*, any refusal by the Federal Republic of Germany to extradite S.M. to Bosnia and Herzegovina would be contrary to the obligations of the Federal Republic of Germany under that convention.

47 In the light of those considerations, it should be stated, in the third place, that, as the Advocate General noted in point 32 of his Opinion, the Court's case-law in the judgment in

Raugevicius did not establish an automatic and absolute right for Union citizens not to be extradited out of the territory of the European Union.

48 As is apparent from paragraphs 35 to 42 of the present judgment, where there is a national rule which introduces, as in the case in the main proceedings, a difference in treatment between nationals of the requested Member State and Union citizens who reside there permanently, by prohibiting only the extradition of the former, that Member State is under an obligation actively to seek to ascertain whether there is an alternative to extradition that is less prejudicial to the exercise of the rights and freedoms which such Union citizens derive from Articles 18 and 21 TFEU, when they are the subject of an extradition request that has been issued by a third State.

49 Thus, where the application of such an alternative to extradition consists, as in the present case, in Union citizens who reside permanently in the requested Member State being able to serve their sentence in that Member State under the same conditions as nationals of that Member State, but such application is conditional upon obtaining the consent of the third State which made the extradition request, Articles 18 and 21 TFEU require the requested Member State actively to seek the consent of that third State. To that end, the requested Member State is obliged to use all the mechanisms for cooperation and assistance in criminal matters which are available to it in the context of its relations with that third State.

50 If the third State which made the request for extradition consents to the custodial sentence being enforced in the territory of the requested Member State, that Member State will be in a position to allow Union citizens whose extradition has been requested and who reside permanently in its territory to serve their sentence there, and thus to ensure that they are treated in the same way as that Member State's own nationals in relation to extradition.

51 In such a situation, it is apparent from the information provided to the Court that that alternative to extradition could also allow the requested Member State to exercise its powers in accordance with its contractual obligations to the third State which made the extradition request. Subject to verification by the referring court, the consent of that third State to the full sentence referred to in the extradition request being enforced in the territory of the requested Member State is, in principle, liable to render the execution of that request superfluous.

52 Accordingly, if, in the present case, the Federal Republic of Germany did obtain the consent of Bosnia and Herzegovina to S.M. serving the sentence that was handed down to him in that third State in the territory of the Federal Republic of Germany, the application of that alternative to extradition required by Articles 18 and 21 TFEU would not necessarily result in the latter being in breach of its obligations towards that third State under the European Convention on Extradition, which it is for the referring court to ascertain.

53 If, on the other hand, despite the implementation of the mechanisms referred to in paragraph 49 of the present judgment, that third State does not consent to the custodial sentence at issue being served in the territory of the requested Member State, the alternative to extradition required by Articles 18 and 21 TFEU could not be applied. In that situation, the Federal Republic of Germany can extradite the person concerned in accordance with its obligations under that convention, since a refusal to extradite would not, in that case, enable the risk of that person going unpunished to be averted.

54 In the same situation, the extradition of the person concerned constitutes, in the light of that objective, a necessary and proportionate measure for attaining that objective; therefore, the restriction of the right to move and reside freely within the territory of the Member States, within

the meaning of Article 21 TFEU, which is at issue in the main proceedings, appears to be justified, having regard to the case-law cited in paragraphs 35 and 36 of the present judgment.

55 In accordance with the settled case-law of the Court, the requested Member State must nevertheless check that the extradition will not infringe the rights guaranteed by the Charter of Fundamental Rights of the European Union, in particular Article 19 (the judgment in *Raugevicius*, paragraph 49; see also, to that effect, judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 64 and the case-law cited).

56 In the light of all of the foregoing considerations, the answer to the question referred is that Articles 18 and 21 TFEU must be interpreted as meaning that:

- a Member State to which a request for extradition has been made by a third State for the purpose of enforcing a custodial sentence imposed on a national of another Member State residing permanently in the first Member State, the national law of which prohibits only the extradition of its own nationals out of the European Union and makes provision for the possibility that that sentence may be enforced in its territory provided that the third State consents to it, is required by those provisions actively to seek such consent from the third State which made the extradition request, by using all the mechanisms for cooperation and assistance in criminal matters which are available to it in the context of its relations with that third State;
- if such consent is not obtained, that first Member State is not precluded by those provisions, in such circumstances, from extraditing that Union citizen, in accordance with its obligations under an international convention, in so far as that extradition does not infringe the rights guaranteed by the Charter of Fundamental Rights of the European Union.

Costs

57 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:

Articles 18 and 21 TFEU must be interpreted as meaning that:

- **a Member State to which a request for extradition has been made by a third State for the purpose of enforcing a custodial sentence imposed on a national of another Member State residing permanently in the first Member State, the national law of which prohibits only the extradition of its own nationals out of the European Union and makes provision for the possibility that that sentence may be enforced in its territory provided that the third State consents to it, is required by those provisions actively to seek such consent from the third State which made the extradition request, by using all the mechanisms for cooperation and assistance in criminal matters which are available to it in the context of its relations with that third State;**
- **if such consent is not obtained, that first Member State is not precluded by those provisions, in such circumstances, from extraditing that Union citizen, in accordance with its obligations under an international convention, in so far as that extradition does not infringe the rights guaranteed by the Charter of Fundamental Rights of the European Union.**

[Signatures]

* Language of the case: German.
