

Slovenia, Administrative Court, Judgment I U 1351/2020, 21 October 2020, ECLI:SI:UPRS:2020:I.U.1351.2020.20

Member State

 Slovenia

Topic

Mutual trust, rule of law

Deciding Court Original Language

Upravno sodišče Republike Slovenije

Deciding Court English translation

Administrative Court of the Republic of Slovenia

Registration N

I U 1351/2020

Date Decision

21 October 2020

ECLI (if available)

ECLI:SI:UPRS:2020:I.U.1351.2020.20

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

Article 4, 47 of the CRF

Article 4(3) of the Treaty on the EU

Articles 18 and 21 of the Treaty on the Functioning of the EU

Extradition treaty between the European Union and the United States of America, signed at Washington on 25 June 2003

Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

C-182/15, Petruhhin, 6. 9. 2016

C-897/19 PPU, I.N., 2. 4. 2020

C-556/17, Torubarov, 29. 7. 2019

C-414/16, Egenberger, 17. 4. 2018

C-404/15, C-659/15 PPU, Aranyosi, Căldăraru, 5. 4. 2016

C-128/18, Dorobantu, 15. 10. 2019

CJEU, Opinion No 2/13, 18. 12. 2014

ECtHR Jurisprudence

Trabelsi v. Belgium, App. no. 140/10, 4. 9. 2014, odst. 118

Aswat v. the United Kingdom

Babar Ahmad and Others v. the United Kingdom, App. nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, 10. 4. 2012

Calovskis v. Latvia, App. no. 22205/13. 24. 7. 2014

Steven Willcox and Scott Hurford v the United Kingdom, App. Nos. 43759/10 and 43771/12, 8. 1. 2013

Kafkaris v. Cyprus (12. 2. 2008)

López Elorza v. Spain, App. no. 30614/1512. 12. 2017

Mamatkulov and Askarov v. Turkey, App. nos. 46827/99, 46951/99, 4. 2. 2005

mutatis mutandis: Hirsi Jamma and Others v. Italy;

mutatis mutandis: Ilias and Ahmed v. Hungary App. no. 47287/15, 21. 11. 2019

mutatis mutandis: J.K. and others v. Sweden, App. no. 59166/12, 23. 8. 2016

Subject Matter

The Administrative court of the Republic of Slovenia (the AC) interpreted the Slovenian legislation concerning extradition to third countries in the light of Article 18 of the Constitution, Article 3 ECHR and Article 4 CFR as well as the right to an effective remedy from Article 47 of the Charter and EU citizens' rights (freedom of movement and prohibition of discrimination on the grounds of nationality) in a case concerning a German national, who opposed extradition sought by the US authorities on the basis of inhumane conditions in the US prisons, his personal health problems and lack of proportionality between the sentence threatening in the USA, and the one, he could be imposed in Slovenia. The applicant also invoked his EU citizenship rights to non-discrimination and free movement (Articles 18 and 21 of the TFEU).

Legal issue(s)

The AC had to determine, whether the decision of the Ministry of Justice to extradite a German citizen to USA has complied with the procedural obligation from Articles 3 ECHR, 18 of the Constitution and 4 CFR (prohibition of inhumane and degrading treatment) and the right to freedom of movement and prohibition of discrimination on the grounds of nationality (Art. 18 and 21 TFEU).

Request for expedited/PPU procedures

N/A

Interim Relief

Yes – granted by the Administrative court of the Republic of Slovenia, Order I U 1351/2020-11 of 29 September 2020.

National Law Sources

Article 530 (1) (3) of the Criminal Procedure Act (the CPA)
Article 18 of the Constitution
Constitutional court, Decision U-I-59/17-27, 18. 9. 2019
Administrative court, Judgment I U 272/2015-17, 14. 5. 2015

Facts of the case

The case concerns a German national, accused of illegal trafficking of Chinese honey into the USA. The US authorities requested his extradition from Slovenia. Slovenian authorities notified Germany about the extradition request. The Hamburg state prosecution service declined to issue an EAW and prosecute the applicant, stating that the crimes allegedly committed cannot be prosecuted in Germany. Slovenian criminal courts found no reasons against such extradition and the Ministry of Justice allowed the extradition, even though the applicant submitted new evidence of the alleged inhumane conditions in the US prisons and an order issued by the Berlin administrative court, which required the German Federal Foreign Affairs Office to officially request Slovenia to surrender the applicant to Germany. The Ministry of Justice opined that it was bound by the decision of the Slovenian courts, which allowed the surrender to the USA and that the Berlin court order was addressed to another German body and had no legal force in Slovenia. The applicant therefore requested an interim order from the Administrative court to prevent his extradition to the USA. The interim order was granted.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

Applicable legal framework

In the first part of the judgment, the AC defined the relevant legal framework. It found that the Ministry is applying EU law in the sense of Article 51(1) of the Charter and that the Charter is applicable in addition to other EU law sources, the ECHR and the Slovenian law.

Articles 18 (1) and 21 (1) TFEU (prohibition of discrimination on the grounds of nationality and freedom of movement)

The AC first acknowledged the similarity of the case to the Petruhhin case (C-182/15). It then assessed the circumstances of the concrete case in the light of principles, established in Petruhhin and subsequent CJEU case law.

It found that freedom of movement of EU citizens from Article 21 (1) can be limited only if it is based on objective grounds, pursues a legitimate interest and if the measure is necessary and the interest cannot be attained with less intrusive means. The legitimate interest in the case at hand was preventing impunity. According to the court, citing Petruhhin, Slovenia should have used all the cooperation and mutual assistance mechanisms provided for in the criminal field of EU law to combat impunity and at the same time ensure the EU national the right to freedom of movement. Accordingly, the Ministry should have used a less intrusive means to fight impunity, namely, verify the legal grounds and effects of the order of the Berlin administrative court, since the order could prove to be relevant for the case at hand (para. 59, 61). However, the Ministry has not contacted the German authorities, since it erred in law. It wrongly considered itself bound by the decision of the Slovenian courts that found no reasons against extradition and disregarded the requirements, stemming from the principle of mutual trust between Germany and Slovenia (Art. 4(3) TFEU in relation to Article 21 and 18 TFEU).

Article 4 of the CFR (prohibition of inhumane and degrading treatment)

Regarding the alleged disproportionality between the sanction potentially imposed in the USA and in Slovenia, the AC referred to the ECtHR case law. It first ruled that there has to be a risk of grossly disproportionate sentence (Babar Ahmad and Others v. the United Kingdom, App. nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, 10. 4. 2012, para. 235-238). It then explained, based on the Strasbourg case law, that the Court understands this legal standard to be satisfied only in exceptional cases, such as capital penalty, life sentence or potential long sentences for minor offences (Aswat v. the United Kingdom). Given that the American state attorney explained the Slovenian authorities that in 7 other cases concerning illicit trafficking of Chinese honey, the sentences ranged from 1 month to 3 years and that the applicant has neither provided a reasoned reply nor convincingly refuted the attorney's statements, the AC found that the decision of the Ministry was lawful in this part.

As to the alleged inhumane conditions in US prisons, the AC ruled that in the case at hand, as well as in various different contexts (e.g. asylum), in which a person claims he/she would be subjected to inhumane treatment if returned to another country, the competent authority has to verify all the relevant information, which it is required to seek proprio motu to dispel any doubt regarding the risk of inhumane conditions. It should rely on information that is objective, reliable, specific and properly updated. Assurances given by other countries should not be too general, vague, unspecified or open for wide interpretation (Trabelsi v. Belgium, App. no. 140/10, 4. 9. 2014, para. 135.). In the concrete case, the Ministry relied only on the information, sent by the concrete prison

facility itself. It has neither taken into account the information, provided by the applicant, nor sought other information proprio mutuo, since it viewed itself incompetent to turn down the extradition request due to an erroneous understanding of the Slovenian legislation.

The AC thus annulled the decision of the Ministry and remanded the case thereto.

Relation of the case to the EU Charter

Articles 47 and 4 of the Charter are one of the main legal sources for the Administrative court. The Constitutional court, which later heard the case, relied also on Article 19 (2) of the Charter.

Relation between the EU Charter and ECHR

When the AC defined the legal sources applicable in this case, it found Article 47 of the Charter directly applicable. It concluded that the Charter offers more protection than the ECtHR, since Article 6 is not applicable due to the public nature of the dispute (Article 6 is applicable only in determination of civil rights and obligations) (para. 56).

When the AC discussed the standards stemming from the procedural obligation under Articles 3 ECHR and 4 of the Charter, it ruled that under the jurisprudence of the CJEU, the duty of the competent authority of the requested Member State to rely on information that is objective, reliable, specific and properly updated, is not conditioned upon the existence of an “arguable claim”, as is the case before the ECtHR. The Charter thus seems to offer more protection in this aspect (para. 70).

Use of Judicial Interaction technique(s)

Consistent interpretation – interpretation of the constitution in the light of ECtHR jurisprudence, CJEU case law and the Constitution.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

N/C

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The AC uses the CJEU and ECtHR jurisprudence throughout its reasoning and applies the standards developed by these two supranational courts.

Consistent interpretation and direct effect:

The AC was faced with the question, how to give effect to EU law in this case. Article 530 (1) of the CPA provides: “The Minister of Justice issues a decision granting or refusing extradition. [...]” Article 530 (3) of the CPA provides reasons under which, the Minister must decline the extradition: if the person has the right to asylum, if the offence is of political or military nature, and if there is a risk that the person whose extradition is requested would be subjected to torture or inhumane or degrading treatment or punishment in the requesting state. The recent amendment of the CPA (CPA-N), deleted the last reason. Relying on the literal interpretation, the Ministry felt that it could not prevent the extradition on the basis of risk of torture or inhumane or degrading treatment or punishment. The AC found such an interpretation wrong. It first relied on the direct effect of Article 47 of the Charter in relation to Articles 18(1) and 21 (1) TFEU and ruled that it could not subscribe to the reading, adopted by the Ministry. It then held that the two reasons for declining the extradition are not exclusive, but are only two among others, since the interpretation, consistent with EU law, ECHR and the Constitution, requires that Articles 530 (1) and 530 (3) are interpreted in such a way. It seems that the AC was relying on direct effect and consistent interpretation at the same time. The direct effect of Article 47 seems to have served as an additional argument to boost the legitimacy of the interpretation adopted by the court, since the AC could come to the same result by only invoking the principle of consistent interpretation. There was not much room for such interpretation under national law, but the AC has found enough support in the text of national provisions to prevent a counter argument that the interpretation was contra legem. (see para. 61) The Constitutional court agreed with the AC, whereas the SC seems to disagree (see part “other” of this case note)

Strategic use of judicial interaction technique (purpose aimed by the national court)

See section “vertical judicial interaction patterns”.

Impact on Legislation / Policy

N/A

Notes on the national implementation of the preliminary ruling by the referring court

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

Yes (see above).

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

No

Did the national court take into account national case law on fundamental rights?

Yes, but only a few cases (see above).

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Impact on national case law from the same Member State or other Member States

N/A

Connected national caselaw / templates

N/A

Other

The case was later heard by the Supreme court (the SC), which requested the review of constitutionality of Article 530 of the CPA before the Constitutional court. According to the Supreme Court, Articles 530 (1) and 530 (3) could not be interpreted in such a way as to allow the Minister of Justice to take into account new information, relevant from the perspective of prohibition of inhumane or degrading treatment or punishment. The SC also opined that the courts should conduct the review of circumstances relevant for Article 18 of the Constitution (and Art 3 ECHR) and not the MoJ (see U-I-779/21, para. 3, 13).

The Constitutional court (the CC), hearing the SC's request for the review of constitutionality, sided with the AC. It ruled that Article 530 (3) allows the MoJ to decline the extradition in two cases. However, this does not mean that the Minister cannot rely on other reasons, not explicitly provided in Article 530 (3). The CC ruled that the decision of the MoJ is discretionary. However, the discretion has to be used in such a way that it ensures the respect for fundamental rights and other provisions of the Constitution. The CC concluded that the SC failed to show that an interpretation consistent with the constitution could not be adopted in the case at hand. As a result, the CC declared the request for review of constitutionality inadmissible.

The SC followed the decision of the CC, but annulled the judgment of the AC, since the AC has not taken into account the new interpretation of material law, adopted by the CC, which held that the MoJ's decision is discretionary. In a dissenting opinion, judge Kerševan argued that the SC should have filed a new request for review of constitutionality to the CC and continue the dialogue.

Kerševan questioned the approach taken by the CC and argued that it is not systemic, since the text of the law gives support to discretionary decision-making and can thus turn out to be a heavy blow for legal certainty, especially if the public administration would apply discretion in other instances, in which there would also be a lack of textual support for such approach. The case is currently (5 September 2023) pending before the AC.

The essence of this dissenting opinion later found its way into another request for review of constitutionality, filed by the SC in relation to a case of a Russian national, whose extradition was sought by Russia. The CC once again confirmed that interpretation consistent with the Constitution and ECHR (EU law was not applicable) was possible. It found Article 530 CPA consistent with Articles 2 (rule of law) and 120 (requirement that the administration acts according to the statutes and constitution) of the constitution. The absolute nature of the right in question did not require the legislator to explicitly include a provision demanding the MoJ to review allegations connected with Article 18 of the Constitution (Article 3 ECHR). In safeguarding this absolute right, public administration could not unconstitutionally interfere with other rights or public interest, since any limitation of an absolute right is prohibited. This is why the administration could adopt a creative interpretation of legislation. (see Decision U-I-388/22, 8.6.2023 -

<https://www.us-rs.si/odlocitev/?q=U-I-388%2F22-11&caselid=&df=&dt=&af=&at=&pri=1&vd=&vo=&vv=&vs=&ui=&va=&page=1&sort=&order=&id=120075>).

[\(Link to\) full text](#)

Administrative court:

[https://www.sodnapraksa.si/?q=I%20U%201351/2020&database\[SOVS\]=SOVS&database\[UPRS\]=UPRS](https://www.sodnapraksa.si/?q=I%20U%201351/2020&database[SOVS]=SOVS&database[UPRS]=UPRS)

Constitutional court:

<https://www.us-rs.si/odlocitev/?q=U-I-779%2F21-8&caselid=&df=&dt=&af=&at=&pri=1&vd=&vo=&vv=&vs=&ui=&va=&page=1&sort=&order=&id=117631>

Supreme Court:

[https://www.sodnapraksa.si/search.php?q=odlo%C4%8Dbe%20&database\[SOVS\]=SOVS&database\[UPRS\]=UPRS](https://www.sodnapraksa.si/search.php?q=odlo%C4%8Dbe%20&database[SOVS]=SOVS&database[UPRS]=UPRS)

Author

Mohor Fajdiga, University of Ljubljana (UL)

History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Administrative court of the Republic of Slovenia, Order I U 1351/2020-11 of 29 September 2020 (interim order)
2. Administrative court, Judgment I U 1351/2020-20 of 21 October 2020
3. Supreme court of the Republic of Slovenia, Order X Ips 40/2021-34 of 13 October 2021

4. Constitutional court of the Republic of Slovenia, Order U-I-779/21-8 of 7 April 2022
 5. Supreme court, Order X Ips 40/2021 of 31 August 2022
 6. Administrative Court – currently pending
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