The Frank Schneider debate ... now in Parliament

Friday 11 February, 2022

Frank Schneider is currently a hot topic of debate in Luxembourg's parliament. The former head of intelligence under ex-Prime Minister Jean Claude Juncker is awaiting France's decision on his extradition to the United States, which was requested by the Southern District of New York (SDNY) due to the alleged involvement of his Luxembourg company with the cryptocurrency OneCoin. Luxembourg Justice Minister Sam Tanson was questioned yesterday by two members of the main opposition, Laurent Mosar and Gilles Roth, about the government's position regarding the United States' request to France, where Schneider has resided with his family for the past 25 years and where he is currently on conditional release [1]. The government now has one month to provide answers to parliament. The parliamentarians are demanding clarification on media reports suggesting that on May 4, 2021, Luxembourg's judicial authorities waived their right to block Schneider's extradition by rejecting the offer made by France on May 3, 2021, to hand him over to his home nation, which, like France, does not extradite its citizens. The parliamentarians also wanted further clarity on the resources at the government's disposal to stop the extradition of one of its citizens to the United States and on the criteria under which Luxembourg would stop an extradition of one of its citizens to a non-EU country.

As neither Luxembourg nor France extradite their citizens, Schneider's situation has triggered a debate on EU citizen's rights under article 21 of the Treaty of the Functioning of the European Union. Under the rights enshrined in the Charter of Fundamental Rights of the EU, "any discrimination on grounds of nationality shall be prohibited" [2].

Many EU members choose to protect their citizens from extradition to non-EU countries, such as the United States, due to their distrust of the legal systems in such countries, arguing that their citizens would not get comparable rights to defence or to a fair trial and would be subjected to unacceptable prison conditions compared to those in their home countries. There is an open and well-publicized debate about prosecutorial misconduct in the SDNY, which is often seen as a particularly aggressive jurisdiction. Moreover, US judges have condemned the "grave dereliction of prosecutorial responsibility" [3] and "[called] out their investigative practices" [4]. Thus, if France does not trust the US justice system to judge French citizens fairly and Luxembourg does not trust it to judge its citizens fairly, under what logic would such concerns be waived by either country for a citizen of the other, like Schneider? It is even more questionable when EU member states entrust the citizens of co-members to the Unites States justice system when that system itself has judged that its prison conditions, particularly in detention centres serving SDNY, are no longer acceptable, as per the order made by SDNY Judge Stein on February 2, 2022 [5].

The Luxembourg government's response to the MP's questions will shed light on how "European" one of the union's founder members really is, especially one that was chosen by the EU to host many of its institutions, including the Court of Justice of the European Union.

[1]

[2]

[3]

[4]

[5] https://images.law.com/contrib/content/uploads/documents/389/156404/Stein-Jails-Exceptional.pdf

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Sandstone SA

T. +35227990101
E. Info@sandstone.lu
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