Ruling 669 B+R

Cour de cassation (Court of cassation)

Plenary assembly

Public hearing of May 12, 2023

Mr. Soulard, First President

Appeal n°U 22-82.468

French Republic

In the name of the French people

Ruling of the *Cour de cassation* (Court of cassation), in its plenary assembly, on May 12, 2023

Mr. [P] [W] appealed against the ruling delivered on April 4, 2022 by the Investigating Chamber of the *Cour d'appel* (Court of Appeal) of Paris, First Section, which, in the investigation against him on charges of torture and complicity in torture, complicity in forced disappearances, war crimes and complicity in war crimes, participation in a group formed or a conspiracy established with a view to preparing war crimes, ruled on his request for the annulment of documents in the proceedings.

By order dated June 10, 2022, the President of the Criminal Chamber ordered that the appeal be considered immediately.

By order of September 9, 2022, the First President of the *Cour de cassation* (Court of cassation) ordered that the appeal be referred to the plenary assembly of the Court.

The appellant invokes, before the plenary assembly, pleas for quashing.

These pleas were set out in a written submission filed with the registrar of the *Cour de cassation* (Court of cassation) by SCP Boré, Salve de Bruneton and Mégret, counsel for Mr. [P] [W].

A brief in defense was filed with the Registrar of the *Cour de cassation* (Court of cassation) by SCP Piwnica et Molinié, counsel for the [3], [4] et31 [1],, and Mr. [F] and Mr. [L].

The written report of Ms. Leprieur, Judge, and the written opinion of Mr. Molins, Prosecutor-General, were made available to the parties.

On the report of Ms. Leprieur, Judge, assisted by Mr. Dimitri Dureux, Judge-auditor at the documentation, studies and report department of the court, the observations of SCP Boré, Salve de Bruneton and Mégret, SCP Piwnica and Molinié, and the opinion of Mr. Molins, Prosecutor-General, to which, among those invited to reply, SCP Boré, Salve de Bruneton and Mégret replied, after the

debates at the public hearing of March 17, 2023, where Mr. Soulard, First President, Messrs Chauvin, Sommer, Teiller, Bonnal, Vigneau, Presidents, Ms. Martinel, Elder Judge of the Chamber acting as President, Ms. Leprieur, Reporting Judge, Mr. Huglo, Mss. de la Lance, Darbois, Elder Judges of the Chamber, Mss Auroy, Leroy-Gissinger, Mr. Delbano, Judges acting as Elder Judges of chambers, Ms. Cavrois, Mr. Martin, Mss Agostini, Grandjean, Mr. Bedouet, Judges, Mr. Molins, Prosecutor-General and Ms. Mégnien, Court Registrar,

the *Cour de cassation* (Court of cassation), in its plenary assembly, composed of the First President, the Presidents, the Elder Judges of the chambers and the aforementioned Judges, after having deliberated in accordance with the law, has delivered the present ruling.

Facts and procedure

1. It follows from the ruling under appeal and the documents in the proceedings that:

2. On June 26, 2019, a complaint was filed with the Public Prosecutor at the *Tribunal de Grande Instance de Paris* (Paris Tribunal of First Instance) by various individuals and associations concerning acts constituting torture, crimes against humanity, war crimes and complicity in these crimes, allegedly committed between 2012 and 2018, on Syrian soil, by members of the Salafist islamist group Jaysh Al-Islam, waging an armed struggle with the aim of replacing the regime of Mr. [B] [M] with a government based on Sharia.

3. The kidnapping of four people, Ms. [C] [A], a lawyer and human rights activist, as well as her husband and two co-workers, on December 9, 2013 in [Localité 2], Syria, was attributed to members of the Jaysh Al-islam group. In particular, Mr. [P] [W], alias [V] [T], of Syrian nationality, identified as the former spokesman of this group, was implicated.

4. A preliminary investigation was initiated.

5. Mr. [W] was arrested in [Localité 5] (France) on January 29, 2020.

6. In introductory and supplementary prosecution acts dated January 31, 2020, the national anti-terrorist prosecutor requested the opening of an investigation against Mr. [W] on various counts.

7. Mr. [W] was charged on the same day with torture and complicity in torture, complicity in enforced disappearances, war crimes and associated complicity, participation in a group formed or an agreement established with a view to preparing war crimes.

8. By petition of July 23, 2020, Mr. [W] sought the annulment of acts of the proceedings. In particular, he sought the annulment of the introductory and supplementary prosecution acts and the initial-hearing interrogation, based on the incompetence of the French prosecution and trial authorities to deal with the offences in question.

Reviewing pleas

On the second plea

9. It is not such to allow admission to trial within the meaning of article 567-1-1 of the Code of criminal procedure.

On the first plea

Statement of plea

10. The plea criticizes the ruling under appeal insofar as it declared that there was no reason to annul an act or element of the proceedings, whereas "the universal jurisdiction of the French courts can only be retained, on the basis of article 689-2 of the Code of criminal procedure, if the person prosecuted is a civil servant of the State concerned or has acted in an official capacity on behalf of that State; by retaining, in order to reject the plea arguing the lack of jurisdiction of the French courts to investigate and prosecute Mr. [W] for torture, that the stipulations of article 1 of the New York Convention allow for the prosecution and punishment of the crime of torture attributed to persons who have obeyed "a collective strategy and logic" (ruling under appeal, page 8, paragraph 3) although these provisions can only be applied to those qualified as public officials of the State concerned, or who acted in an official capacity for that State, the Investigating Chamber violated article 689-2 of the Code of criminal procedure and article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984.

Court's response

11. According to article 689-1 of the Code of criminal procedure, any person who has committed, outside the territory of the French Republic, one of the offenses listed in the following articles may be prosecuted and tried by the French courts, if he or she is in France.

12. Under article 689-2 of the same code, for the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on December 10, 1984, any person who has committed torture within the meaning of article 1 of the Convention may be prosecuted and tried under the conditions provided for in article 689-1.

13. Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states: "for the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

14. Article 1 of the Convention defines torture as an act inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

15. The reference made by article 689-2 of the Code of criminal procedure to the concept of torture, within the meaning of article 1 of the Convention, necessarily includes the concept of perpetrator of torture contained in the latter text.

16. It follows that the case of universal jurisdiction of the aforementioned article 689-2 is limited to torture attributed to a public official or a person acting in an official capacity or at his instigation or with his express or tacit consent.

17. However, the notion of a person acting in an official capacity, within the meaning of the reference made by the national text to the above-mentioned Convention, must be understood to include a person acting for or on behalf of a non-governmental entity, where that entity occupies a territory and exercises quasi-governmental authority over that territory.

18. Such an interpretation is consistent with the purpose of the Convention, which is to increase the effectiveness of the fight against torture by avoiding impunity for perpetrators.

19. It is clear from the preliminary works of the Convention that the restriction, relating to the functions of the perpetrator of acts of torture, was intended to dispel any fear that international criminal law might encroach on the domain traditionally reserved for domestic law. The drafters of the Convention considered that, in cases where no public official was involved, an international convention was not necessary since the torturer would probably be apprehended and punished in accordance with the laws of the country concerned (United Nations Economic and Social Council, Commission on Human Rights, 35th session, E/CN.4/1314, 19 December 1978, §29).

20. However, if a territory is in fact occupied by a group exercising the authority normally vested in a government, there is a risk that torture will go unpunished.

21. This interpretation was retained by the Committee against Torture in its decisions of 25 May 1999 and 5 May 2003 (United Nations Committee against Torture (CAT), Elmi v. Australia, 25 May 1999, UN Doc. CAT/C/22/D/120/1998, §6.5; UN Committee against Torture (CAT), S.S. v. The Netherlands, 5 May 2003, UN Doc. CAT/C/30/D/191/2001, §6.4), from which it follows that the words "or other person acting in an official capacity" include a group exercising de facto authority in a region it occupies.

22. It is worth noting that the UK Supreme Court relied on this interpretation of the UN Committee against Torture in its decision of 13 November 2019 on the interpretation of the concept of "person acting in an official capacity" in section 134(1) of the Criminal Justice Act 1988 (Supreme Court, 13 November 2019 R v . Reeves Taylor v Crown Prosecution Service, [2019] UKSC 51).

23. In this decision, the Supreme Court first noted that section 134 (1) of the national law is intended to give effect to the Convention against Torture in domestic law, and must therefore be interpreted in the same way as the Convention (§23). It then referred to the interpretation of the UN Committee against Torture set out in the above-mentioned S.S. v. The Netherlands decision of 5 May 2003, according to which the Convention can be applied to acts of torture inflicted by non-governmental entities that occupy and exercise quasi-governmental authority over a territory. (§51).

24. It concluded that the notion of a "person acting in an official capacity" in section 134 (1) includes a person who acts or purports to act, otherwise than in a private and individual capacity, for or on behalf of an organization or body which exercises, in the territory controlled by that organization or body and in which the relevant conduct occurs, functions normally exercised by governments over their civilian populations. (§76).

25. In the present case, in order to dismiss the plea of nullity based on the lack of jurisdiction of the French courts to hear the acts of torture attributed to Mr. [W], the ruling under appeal holds that the Jaysh Al-Islam organization acted in Eastern Ghouta as an entity composed of several thousand fighters, which exercised quasi-governmental functions as described by the civil parties, i.e., a judicial, military, prison, commercial and religious authority.

26. The judges added that the purpose of the Convention, by referring to public officials and "any other person acting in an official capacity" is to prevent it from being used for private acts committed by individuals, and not to restrict, in any way, its scope of application for acts that are, on the contrary, based on a collective strategy and logic. They point out that the Jaysh Al-Islam organization has implemented, in Eastern Ghouta, widespread practices of intimidation, pressure and repression, inflicting violence and causing pain and suffering, which is exactly the framework provided by the New York Convention.

27. They conclude that, insofar as it is not a question at this stage of assessing the constituent elements of the offence of torture, but only of verifying that the conditions for the application of universal jurisdiction resulting from the Convention have been met, the plea that the French courts lack jurisdiction must be rejected.

28. The Investigating Chamber erroneously stated that article 689-2 of the Code of criminal procedure applies to all acts obeying a collective strategy and logic, without restricting the scope of the text to acts committed by a public official or any other person acting in an official capacity, such as a person acting on behalf of or in the name of a non-governmental entity, when the latter is occupying a territory and exercising quasi-governmental authority over that territory.

29. However, the ruling does not incur censure, since it found that the Jaysh Al-Islam organization exercised quasi-governmental functions in the territory of Eastern Ghouta, which it occupied at the time in question.

30. The plea is therefore unfounded.

On the third plea

Statement of plea

31. The plea criticizes the ruling under appeal insofar as it declared that there was no need to annul an act or a document of the proceedings, whereas "the universal jurisdiction of the French courts can only be retained, on the basis of article 689-11 of the Code of criminal procedure, if the person accused resides in France, in a stable, effective and lasting manner; in retaining, to dismiss the plea based on the lack of jurisdiction of the French courts to investigate and prosecute Mr. [W] for war crimes and offenses, that the various elements from the proceedings concerning Mr. [W] "showed a certain stability of residence in the city of [Localité 5] during this period of more than three months." (ruling

under appeal, p. 10, para. 3), so that "the criterion of habitual residence [was] thus fulfilled" (ibid., para. 4), although it was clear from the documents in the case file that Mr. [W] was residing in a stable, effective and lasting manner in Turkey and that he was only in France for a limited period of three months in order to attend university conferences, so that his habitual residence could not be established on the territory of the French Republic, the Investigating Chamber violated article 689-11 of the Code of criminal procedure.

Court's Response

32. According to article 689-11 of the Code of criminal procedure, amended by law n°2019-222 of March 23, 2019, in force as of March 25, 2019, can be prosecuted and judged by the French courts, if he/she usually resides on the territory of the Republic, any person suspected of having committed abroad the crimes against humanity, other than genocide, provided for in articles 212-1 to 212-3 of the Criminal code, as well as the war crimes and offenses defined in articles 461-1 to 461-31 of the same code, if the acts are punishable under the legislation of the State where they were committed or if that State or the State of which the suspected person is a national is a party to the Convention on the Statute of the International Criminal Court.

33. The question raised by the plea concerns the interpretation of the concept of habitual residence, a question on which the Criminal Chamber has never ruled, even though the concept appears, without being defined, in various texts of the Criminal code.

34. During the parliamentary debates, reference was made, in the absence of case law of the Criminal Chamber, to that of the First Civil Chamber of the *Cour de cassation* (Court of cassation) relating to habitual residence, an autonomous concept in European Union law.

35. It follows from the case law of the Court of Justice of the European Union that habitual residence is a functional and protean concept, varying according to the context and the purpose of the rule, and is assessed by an analysis based on a bundle of indicators, i.e., the factual circumstances specific to the case (CJEU, December 22, 2010, Case C-497/10, Barbara Mercredi v. Richard Chaffe, § 46 and 47).

36. This approach can usefully inspire the assessment of the concept of habitual residence in criminal matters.

37. The condition of article 689-11 of the Code of criminal procedure must thus be interpreted in light of the objective pursued by the legislator.

38. The parliamentary debates reveal that the legislator, on the one hand, wished to prevent the perpetrator of crimes against humanity or war crimes from finding asylum on national territory, and on the other hand, aimed to guarantee the existence of a sufficient link with France, such as to legitimize the prosecution, in order to avoid any instrumentalization of the French courts in conditions that would be detrimental to the conduct of international relations.

39. Thus the rapporteur of the National Assembly's Law Commission stated: "[...] this condition is intended to guarantee the existence of a genuine link between France and the person prosecuted. A mere passage on our territory, for a few hours, would not [...] be a sufficient link, especially since the condition of habitual residence is not as demanding as that of permanent residence or principal residence.

40. In view of these elements, the condition of habitual residence, within the meaning of article 689-11 of the Code of criminal procedure, which presupposes a sufficient connection with France, must be assessed by taking into account a range of indicators, such as the actual or foreseeable duration, the conditions and reasons for the presence of the person concerned on French territory, the desire shown by the individual to settle or remain, or his or her family, social, material, or professional ties.

41. In the case at hand, to reject the plea of nullity based on the lack of jurisdiction of the French courts to hear the war crimes alleged against Mr. [W] on the basis of article 689-11 of the Code of criminal procedure, the ruling under appeal states, with regard to the condition of habitual residence, that the concept is not the same as that of principal residence, nor with that of permanent residence, but that the said text requires more than a simple transit or a passage of a few hours on French territory, the habitual residence must respond to an idea of stability, without any criterion of duration being set.

42. The judges noted that the fact that Mr. [W] lives mainly in Turkey, assuming this information is correct since it is in fact his parents' home, does not automatically mean that he has no other habitual residence.

43. They note that Mr. [W] moved to [Localité 5] on November 7, 2019 and that during the search of his home, were found an Erasmus student card in his name to study at the Institute of Research and Studies on the Arab and Muslim World, [Localité 5] section, a [Localité 5] metro ticket, an [Localité 5] university library card in his name, a French telephone card and a card for [Localité 5] transport. They added that while he was living in France, Mr. [W] went to [Localité 6] and [Localité 7] and that between these two trips, he returned to [Localité 5]. During the two days of surveillance carried out, the investigators noted that the individual remained mostly in his apartment, leaving only to go to the mosque or to eat, thus behaving as an actual resident and not as a tourist. They also noted that Mr. [W] made numerous phone calls to correspondents living in the area.

44. The judges deduce that these various elements show a certain stability of residence for a period of more than three months and that the criterion of habitual residence is thus met.

45. In the light of these statements, which fall within its sovereign power of assessment, the Investigating Chamber, which characterized Mr. [W]'s habitual residence on French territory in view of its duration, the university education he had received and his social and material ties, justified its decision.

46. Thus, the plea must be rejected.

On the fourth plea

Statement of plea

47. The plea criticizes the ruling under appeal insofar as it declared that there was no reason to annul an act or element of the proceedings, whereas "the universal jurisdiction of the French courts can only be recognized, on the basis of the third paragraph of article 689-11 of the Code of criminal procedure, when a foreign national is prosecuted before the French courts for acts qualified as war crimes or offenses, only on the condition that the criminal law of the State in whose territory the acts in question

were committed also criminalizes war crimes or offenses; in dismissing the plea that the French courts lacked jurisdiction to investigate and prosecute Mr. [W] for war crimes and offenses, by considering that the condition of double criminality was met since Syrian criminal law "criminalizes murder, acts of barbarism, rape, violence and torture" (ruling under appeal, p.10, antepenultimate paragraph), however this condition could only be characterized if Syrian criminal law provided for an offence that included a constituent element relating to the existence of an armed conflict with which the acts punished were connected, the Investigating Chamber violated article 689-11 of the Code of criminal procedure.

Court's Response

48. The plea raises the question of the interpretation of the condition of double criminality, set out in article 689-11 of the Code of criminal procedure

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49. This article requires that acts prosecuted in France as crimes against humanity, other than genocide, or war crimes and offenses, be punished by the legislation of the State where they were committed.

50. However, these offences have a contextual constitutive element. Crimes against humanity, defined by articles 212-1 to 212-3 of the Criminal code, are necessarily committed in execution of a concerted plan against a group of civilian population in the context of a generalized or systematic attack. War crimes and offenses, defined in articles 461-1 to 461-31 of the same code, must have been committed during an armed conflict and in relation to this conflict, in violation of the laws and customs of war or international conventions applicable to armed conflicts.

51. Article 689-11, mentioned above, can therefore be given two different interpretations.

52. According to the first interpretation, it must be considered that the existence of a contextual element is an integral part of the acts prosecuted, since, in the absence of this element, they cannot be qualified as "crimes against humanity" or "war crimes and offences". It can be deduced from this that legislation that does not take into account this contextual element and limits itself to criminalizing the underlying facts, taken individually, does not criminalize the acts prosecuted considered as a whole, but only a part of them. It is this whole that justifies the extraterritorial jurisdiction of the French courts, which does not exist for the underlying acts alone. Thus, the condition of double criminality is only fulfilled if, in the State where the acts were committed, the legislation takes into account the fact that they were committed in execution of a concerted plan or during an armed conflict and in relation to the conflict.

53. The second interpretation is based on the fact that article 689-11 of the Code of criminal procedure merely requires that the acts be punished in the State where they were committed, without taking into account the qualification under which they could be prosecuted. It is inferred that it is sufficient that the underlying acts be punishable by the legislation of the State where they were committed.

54. Since the simple wording of the text does not make it possible to give it a decisive meaning, it is appropriate to seek the legislator's intention. This is decisive in the implementation of the universal jurisdiction of French courts, which is a matter of State sovereignty in criminal matters.

55. However, it results from the parliamentary debates that preceded the adoption of the law of August 9, 2010, which created article 689-11 of the Code of criminal procedure, that the condition of double criminality, as stated in the aforementioned article, does not require an identity of qualification and criminalization.

56. Thus, the rapporteur of the Law Commission of the National Assembly indicated, in this regard, during the 1st session of July 13, 2010: "This condition is only the translation of the principle of legality of penalties. It aims to give legal legitimacy to the intervention of the French courts. It does not imply, however, that the acts must be criminalized in the same way in both States. The acts must indeed be punished in the other country even if they are qualified differently or if different penalties are applied. […] No country in the world allows murder or acts of barbarism to go unpunished in its criminal legislation. It cannot therefore be argued that maintaining the condition of double criminality would leave the perpetrators of genocide, for example, unpunished.

57. The Secretary of State to the Minister of Justice and Freedoms added: "This criterion of double criminality [...] does not prevent the prosecution of serious offences. Moreover, contrary to what is explained in the summary of these amendments, neither the qualifications nor the penalties incurred are required to be identical. No serious act, whether genocide, murder or rape, will escape the jurisdiction of the French courts because of this requirement of double criminality."

58. In the same vein, in its observations on the appeals against the law adapting criminal law to the establishment of the International Criminal Court, presented to the *Conseil Constitutionnel* (Constitutional Council), the Government stated: "... this condition of double criminality will never in fact constitute an obstacle to the prosecution and trial of the most serious crimes. It is not necessary, for the application of the article, that the denominations of the crimes be identical (in particular that genocide be criminalized as such): it is sufficient that the acts be criminally sanctioned; and all the States of the world criminalize assassination and murder.

59. Moreover, the terms of article 689-11 of the Code of criminal procedure are identical to those of article 696-3 of the same code, which in matters of extradition requires that the "fact" be "punishable under French law" by a penalty.

60. However, in this matter, the Criminal Chamber has stated that it is up to the French courts to determine whether the acts referred to in the extradition request are punishable under French law or by a criminal or corrective sentence, regardless of the qualification given by the requesting State (Crim., March 21, 2017, appeal n°16-87.122, Bull. crim 2017, n°75). The condition of double criminality of acts qualified as crimes against humanity by the requesting foreign State may be met in national legislation through common law offenses, in particular the crime of murder (Crim., July 12, 2016, appeal n°16-82.664), or aggravated arbitrary sequestration (Crim., May 24, 2018, appeal n°17-86.340, Bull. crim. 2018, n°102).

61. It does not seem justified to interpret differently the terms of article 689-11 of the Code of criminal procedure, relating to a case of universal jurisdiction, and those of article 696-3 of the same code, relating to extradition.

62. Indeed, the mechanism of universal jurisdiction constitutes an alternative to the mechanism of criminal cooperation that is extradition and is applied in the case where the foreign State is failing in its obligation to prosecute international crimes.

63. It should therefore be noted that the condition of double criminality, required for the prosecution of crimes against humanity and war crimes and offenses, does not imply that the criminal characterization of the acts be identical in both legislations, but only requires that they be criminalized by both.

64. The condition of criminalization by foreign law can be fulfilled through a common law offence constituting the basis of the crime prosecuted, such as murder, rape or torture.

65. Such an interpretation does not deprive the condition of double criminality of all significance.

66. For example, with regard to crimes against humanity, the offence provided for in article 212-1 of the Criminal code, consisting of the persecution of any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or gender grounds or on the basis of other criteria universally recognized as inadmissible under international law, does not necessarily have an equivalent in certain foreign laws.

67. Similarly, certain war crimes and offences, such as ordering that there be no survivors or threatening the adversary with this, provided for in article 461-8 of the same code, are not systematically criminalized, even in substance.

68. In the present case, in order to dismiss the plea of nullity based on the lack of jurisdiction of the French courts to hear the war crimes alleged against Mr. [W] on the basis of article 689-11 of the Code of criminal procedure, the ruling under appeal, after noting that Syria is not a party to the Convention on the Statute of the International Criminal Court, states in particular, with regard to the condition of double criminality, that this article does not require perfect identity of the offences in the law of the foreign State and in French law, but only that the acts prosecuted in France are also punishable under the legislation of the State concerned.

69. The judges added that it follows from the provisions of article 461-1 of the Criminal code that the offences defined by book four bis of the first part of the aforementioned code, committed during an international or non-international armed conflict and in relation to this conflict, in violation of the laws and customs of war or of the international conventions applicable to armed conflicts, against persons or property referred to in articles 461-2 to 461-31 of the aforementioned code, constitute crimes or offences of war.

70. After noting that the war crimes for which Mr. [W] was charged are intentional attacks on life, physical or psychological integrity, humiliating or degrading treatment, as well as the conscription or enlistment of minors, they note that the Syrian penal code, in its articles 489, 533, 534, 535, 540, 555 et seq, criminalizes murder, acts of barbarism, rape, violence and torture.

71. They add that, more specifically with regard to an armed conflict, article 488 bis of the Syrian penal code, under the heading "involvement of children in hostilities", punishes an offence exactly identical to that provided for in article 461-7 of the French Criminal code, regarding the conscripting or enlisting of minors under the age of eighteen years into the armed forces or armed groups, or having them actively participate in hostilities.

72. They also note that Syria has ratified the four Geneva Conventions, which is consistent with its recognition of the criminalization of war crimes, as well as the 1989 Convention on the Rights of the Child, and that it has indicated, in a report dated November 17, 2021 to the United Nations Human Rights Council, that it has taken measures to protect its citizens from violations committed by armed terrorist groups.

73. The judges deduce that, apart from the perfect identity relating to the enlistment and participation of minors in hostilities, a number of other war crimes and offenses, as defined in the French Criminal code, are punishable by equivalence in Syrian legislation and are in line with the declared will of this country to combat these offenses, the condition of double criminality is met.

74. The Investigating Chamber wrongly relied on Syria's stated commitment to combating war crimes and offenses, as well as on the Geneva Conventions and the 1989 Convention on the Rights of the Child, ratified by Syria.

75. Indeed, the criminalization of the facts by the foreign law, within the meaning of article 689-11 of the Code of criminal procedure, cannot result from the will displayed by a State to combat offenses.

76. Moreover, in the absence of reference by the Syrian law to the criminalization by the international instruments and the providing for a penalty by said instruments, the principle of legality in criminal matters prevents the acts from being considered as punishable, within the meaning of French law, by the foreign State’s legislation through such standards.

77. However, the ruling does not incur censure, since it appears from its statements that the acts for which Mr. [W] was charged, under the qualification of war crimes and complicity, were punishable, in substance, by Syrian legislation through common law offenses and that of involvement of children in hostilities.

78. The plea is therefore unfounded.

79. Moreover, the ruling is in order.

On these grounds, the Court:

DISMISSES the appeal

Sets at 2,500 euros the total sum that Mr. [P] [W] must pay to the International Federation for associations [3], [4] et [1], as well as to Messrs [L] and [F] on the basis of article 618-1 of the Code of civil procedure;

Thus decided by the *Cour de cassation* (Court of cassation), in its plenary assembly, and pronounced by the First President in its public hearing of May 12, 2023.

The First President

The Reporting Judge

The Court Registrar