

# Clarification of the conditions for the extradition of a European citizen to a third State with which an extradition agreement has been concluded. (Ruling n°1225 -22-80.654)

11/10/2022



Appeal No. 22-80.654

**Dismissal**

**FRENCH REPUBLIC ON BEHALF OF THE FRENCH PEOPLE**

THE COUR DE CASSATION (COURT OF CASSATION), CRIMINAL CHAMBER, has delivered the following ruling:

No X 22-80.654 F-B

No 01225

SL2

11 OCTOBER 2022

DISMISSAL

Mr BONNAL, presiding judge,

FRENCH REPUBLIC

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ON BEHALF OF THE FRENCH PEOPLE

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## **RULING OF THE CRIMINAL CHAMBER OF THE COUR DE CASSATION (COURT OF CASSATION) OF 11 OCTOBER 2022**

Mr [J] [G] filed an appeal against the ruling of the investigating chamber of the *Cour d'appel* (Court of Appeal) of Nancy, dated 19 January 2022, which issued a favourable opinion with regard to the extradition proceeding instituted against him at the request of the US government.

A written submission and further comments were provided.

On the report of Mr Violeau, judge referee, the observations of SCP Piwnica et Molinié, counsel for Mr [J] [G], and the pleadings of Mr Lemoine, Advocate-general, following arguments in the public hearing held on 13 September 2022 in the presence of Mr Bonnal, presiding judge, Mr Violeau, judge-rapporteur, Ms Labrousse, judge of the chamber, and Ms Lavaud, clerk of the chamber,

The criminal chamber of the *Cour de cassation* (Court of Cassation), composed of the above-mentioned presiding judge and judges pursuant to Article 567-1-1 of the Criminal Procedure Code, after having deliberated in accordance with the law, has issued this ruling.

## **Facts and Procedure**

1. It follows from the ruling under appeal and the documents relevant to the proceedings that:
2. On 29 April 2021, Mr [J] [G], a Luxembourg national, was provisionally arrested for extradition purposes on the basis of an arrest warrant issued on 24 September 2020 by a New York district court judge, for acts of conspiracy to commit electronic fraud and money laundering during the period from 2014 to 2019, notably in the United States and Luxembourg.
3. On the same day, Mr [G] was placed in custody pending the outcome of the extradition proceedings.
4. On 2 July 2021, the Prosecutor-General informed him of the extradition request made by U.S. law enforcement authorities and of the grounds thereof.
5. Mr [G] stated that he did not consent to being extradited.

6. In a ruling of 21 July 2021, the investigating chamber issued an interim order for additional information to have the Luxembourg authorities consulted regarding the extradition of a Luxembourg national and to request that the US authorities specify their procedures for prosecuting and imposing penalties for the crimes allegedly committed by Mr [G].

7. The Prosecutor-General supplied the investigating chamber with emails exchanged on 3 and 4 May 2021 with the Luxembourg judicial authorities, in which the prosecutor's office of the *tribunal d'arrondissement de Luxembourg* (Luxembourg district court) wrote as follows: "I do not intend to take up prosecution of the case against [G] [G] being pursued by the US authorities. Therefore, I can confirm that Luxembourg will not be sending France a European arrest warrant in this matter."

## Reviewing pleas

### On the second plea and the first part of third plea

8. They are not such as to allow the appeal to be admitted according to the meaning of Article 567-1-1 of the Criminal Procedure Code.

### On the first plea

### Statement of plea

9. The plea criticises the ruling under appeal in that it issued a favourable opinion regarding the extradition of Mr [G], whereas "the requested Member State must provide the State of which the person is a national with all of the information indicated by the requesting State in the extradition request; the investigating chamber noted that "the French authorities have informed (?) the Luxembourg authorities of the request for provisional arrest " and noted that as of that date the French authorities had not received the extradition request; by nonetheless deeming this procedure to constitute due process, the investigating chamber failed to observe Articles 6 and 14 of the European Convention on Human Rights, Articles 21 and 45 of the Charter of Fundamental Rights, Articles 18 and 21 of the Treaty on the Functioning of the European Union and Articles 591, 593 and 696-8 of the Criminal Procedure Code."

### The Court's response

10. The Court of Justice of the European Union (CJEU) has ruled that Articles 18 and 21 of the Treaty on the Functioning of the European Union (TFEU) must be interpreted as meaning that, when a Member State to which a Union citizen who is a national of another Member State has relocated receives an extradition request from a third State with which the first 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 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, provided that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory (CJEU, ruling of 6 September 2016, Petruhhin, C-182/15).

11. The CJEU further stated that in accordance with the principle of sincere cooperation, it is incumbent upon the requested Member State to inform the competent authorities in the Member State of which the person of whom surrender is sought is a national not only of the extradition request made with respect to that person, but also of all matters of law and fact communicated by the requesting third State pursuant to the said extradition request.

12. The CJEU added that the requested Member State must keep those authorities informed of any change in the circumstances of the person of whom surrender is sought in the event that a European arrest warrant is issued for that person (CJEU, ruling of 17 December 2020, BY, C-398/19).
13. The purpose of this exchange of information is to ensure that the Member State of which the person whose surrender is sought is a national is in a position to exercise the discretion deriving from its national sovereignty in criminal matters, to initiate prosecution for the acts identified in the extradition request and to issue a European arrest warrant for that purpose.
14. Such an interpretation guarantees the right to freedom of movement while preventing, as far as is possible, any risk that the indictable offence goes unpunished (CJEU, ruling of 6 September 2016 above).
15. Moreover, the CJEU has ruled that, provided it has duly notified the Member State of which that person is a national of the extradition request, subject to the conditions described above in paragraphs 11-13, the requested Member State may extradite that person without being required to wait for the Member State of which that person is a national to formally waive issuance of an arrest warrant for, at a minimum, the same acts cited in the extradition request, when the latter Member State refrains from issuance of such a warrant within the reasonable time period it has been granted for that purpose by the requested Member State, taking into account all circumstances of the case (CJEU, ruling of 17 December 2020 above).
16. It follows from this interpretation, which is justified by the adoption of measures for mutual assistance and cooperation in criminal matters pursuant to European Union law and so as not to cause undue delay to the extradition proceeding, it can be concluded that the Member State of which the person of whom surrender is sought is a national is not obligated to render a formal decision that is duly substantiated and open to legal challenge.
17. In the case at hand, for the purpose of issuing an advisory ruling favourable to the extradition request, the ruling under appeal states that the Luxembourg judicial authorities were notified by email on 3 May 2021 of the apprehension of Mr [G], a Luxembourg national, pursuant to a formal request from the United States for provisional arrest for extradition purposes.
18. The judges note that it was stated therein that the person of interest was placed in custody pending the outcome of extradition proceedings for criminal proceedings pursuant to an arrest warrant issued on 24 September 2020 by a U.S. judge for acts committed between 2014 and 2019, characterised as electronic fraud and money laundering in connection with the sale of a cryptocurrency known as OneCoin.
19. In addition, they note that the French authorities had indicated to the Luxembourg authorities that, more specifically, the person of interest was accused by U.S. authorities of having provided “industrial espionage and money laundering services” and “confidential police information to the principal persons accused, enabling one of the two founders of the company and the pyramid/Ponzi scheme to escape arrest”, and of “having continued OneCoin’s activities via a company registered in his name in the United Arab Emirates”.
20. The judges note that in an email of 4 May 2021, the Luxembourg authorities indicated that they did not wish to take up prosecution of the case or issue a European arrest warrant for those acts.
21. They conclude in essence that the information communicated by the French authorities was sufficiently specific regarding the existence of an extradition request from U.S. authorities and the matters of fact and law that the United States communicated to France to allow the Luxembourg authorities to prosecute Mr [G].
22. Given the above statements, the investigating chamber disregarded none of the legal provisions upon which the plea is based.
23. The receipt of the extradition request could not, in the case at hand, be viewed as a relevant change in Mr [G]’s circumstances, insofar as the information communicated by the French minister of justice following the applicant’s

provisional arrest expressly cited the existence of an extradition request for criminal prosecution and was sufficiently specific to allow the Luxembourg judicial authorities to assess the need to issue a European arrest warrant for him.

24. The plea is therefore unfounded.

25. Moreover, with regard to the requests for a preliminary ruling presented as an alternative, it is not appropriate to refer the first, which relates to the scope of the information exchanged between Member States and which is identical in substance to an issue addressed by the CJEU in its aforementioned ruling of 17 December 2020, nor the second and third requests, which relate to the form of the decision containing the refusal to issue a European arrest warrant and the existence of an appeal of that decision, since the response to those requests can be deduced from the aforementioned ruling by the CJEU.

## **On the second part of the third plea**

### **Statement of plea**

26. The second part of the plea criticises the ruling under appeal in that it issued a favourable opinion regarding the extradition of Mr [G], whereas:

“(2) the existence of a “risk” of being subjected to inhuman and degrading treatment dictates that the extradition be refused; having established the existence of widespread use of detention and solitary confinement, the investigating chamber granted the extradition insofar as such detention is not ordered automatically and the actual procedures involved are uncertain; by requiring certainty that such treatment would be ordered whereas the mere “risk” of being subjected to it is sufficient for refusal of extradition, the investigating chamber failed to observe Articles 3 and 6 of the European Convention on Human Rights, Articles 4 and 19 of the Charter of Fundamental Rights and Articles 591 and 593 of the Criminal Procedure Code.”

### **The Court’s response**

27. The CJEU states that when the Member State of which the person whose surrender is sought is a national does not issue a European arrest warrant, the requested Member State may proceed with that person’s extradition on the condition that it has verified that such an extradition will not violate the rights set forth in Article 19, paragraph 2 of the Charter of Fundamental Rights of the European Union.

28. For that purpose, the said Member State – in accordance with Article 4 of the aforementioned Charter, which prohibits inhuman or degrading treatment or punishment – should certainly not be limited to taking into consideration the sole statements of the requesting third-party State or that State’s acceptance of international treaties that in principle guarantee adherence to fundamental rights. In making that verification, the requested Member State’s competent authority must take as its basis objective, reliable, accurate and duly updated information that may notably derive from international court decisions, such as rulings by the European Court of Human Rights and court decisions in the requesting third-party State, as well as decisions, reports and other documents prepared by bodies belonging to the Council of Europe or the United Nations System (CJEU, ruling of 6 September 2016 above; ruling of 2 April 2020, *Ruska Federacija*, C-897/19).

29. In the case at hand, in order to set aside the complaint prompted by the risk of inhuman and degrading treatment, the ruling under appeal states, in substance, that the documents produced by the defence, in particular the reports prepared in 2014 by the UN Committee Against Torture and the Human Rights Committee of the United Nations, as well as the 2020 report by the Working Group on Arbitrary Detention of the UN Human Rights Council, note the existence of worries and concerns relating to prison practices and inmate abuse that are deemed to be excessively widespread, although solitary confinement was not seen to be in systematic use.

30. The judges conclude from the above that these elements do not constitute an objective, reliable, accurate and duly updated picture of Mr [G]'s potential detention conditions, said detention moreover being at the current stage of the proceedings hypothetical in principle and uncertain as to its actual procedures.

31. Given those statements, the investigating chamber correctly applied the legal provisions upon which the plea is based.

32. It rightly held that there was no objective, reliable, accurate and duly updated information indicating that the person whose surrender was sought was in fact at risk of being subjected to detention under conditions that are an affront to human dignity.

33. The plea is therefore unfounded.

34. In the absence of reasonable doubt, it is not appropriate to refer the request for a preliminary ruling, presented as an alternative, regarding the need for the requested Member State to initiate the consultation procedure defined in Article 17, § 2, of the extradition agreement between the European Union and the United States of America, where it is unable to ensure that the rights and freedoms enshrined in EU law will be upheld in the event of extradition or if such extradition would have clearly disproportionate consequences.

35. Furthermore, the ruling is procedurally correct.

**ON THESE GROUNDS, the Court:**

**Dismisses the appeal.**

Thus decided by the criminal chamber of the *Cour de cassation* (Court of Cassation) and decreed by the presiding judge on the eleventh of October in the year two thousand and twenty-two.

**President : Mr Bonnal**

**Reporting Judge-referee : Mr Violeau**

**Advocate-general : Mr Lemoine**

**Lawyer(s) : SCP Piwnica et Molinié**

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International

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