

Clarification of the extradition consequences of Russia's termination of its accession to the European Convention on Human Rights (Ruling n° 1558 – 22-80.610)

13/12/2022



Ruling No. 1558

DISMISSAL

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE CRIMINAL CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION)

OF 13 DECEMBER 2022

Mr [D] [N] brought an appeal against the ruling of the investigating chamber of the *Cour d'appel* (Court of Appeal) of Rennes of 7 January 2022, which issued a favourable advisory opinion regarding the extradition proceeding instituted against him at the request of the Russian government.

A motion was filed.

On the report of Ms Thomas, judge, the observations of SCP Zribi and Texier, lawyer of Mr [D] [N], and the pleadings of Mr Aubert, advocate-general referee, after discussion in the public hearing of 15 November 2022, attended by Mr Bonnal, President, Ms Thomas, judge-rapporteur, Ms Labrousse, judge of the chamber, and Ms Lavaud, Chamber Registrar,

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

Account of the dispute

Facts and Procedure

1. It follows from the ruling under appeal and the documents relevant to the proceedings that:
2. Based on an arrest warrant issued on 28 June 2018 by the District Court of Moscow Presnensky, on 25 November 2020, the authorities of the Russian Federation made a request for extradition of Mr [D] [N], a Russian national, for criminal prosecution on the charges of kidnapping, sequestration and extortion, committed on 19 August 2014 in the region of [Address 1].
3. The person concerned stated that he did not consent to his extradition.
4. By three interim rulings, the investigating chamber stayed the ruling, first of all pending the decision of the National Court of Asylum on the appeal of Mr [N], and then for the purpose of additional information on the conditions of detention that may apply to the person whose extradition is being sought.

Pleas

Review of the plea

Statement of plea

5. The plea criticises the ruling under appeal in that it issued a favourable advisory opinion regarding the extradition of Mr [N] to the Russian Federation, whereas:

"(1) the French State must refuse the extradition of any person to whom it cannot be guaranteed that their fundamental rights and freedoms will be respected; whereas the Russian Federation ceases to be a High Contracting Party to the

European Convention on Human Rights as from 16 September 2022; whereas, insofar as it is based on the Russian authorities' solemn commitment to respect the fundamental rights and freedoms guaranteed by the European Convention on Human Rights, the ruling, which is deprived of a legal basis, does not fulfil the basic conditions for its legal existence, in accordance with Articles 1 of the European Convention on Human Rights and 696-15 of the Code of Criminal Procedure;

(2) whereas the detention of a person at a distance that does not allow them to benefit from authorised visits by members of their family constitutes a disproportionate infringement of their right to respect for private and family life; whereas by stating that Mr [N] does not justify the present situation of his family in the territory of the Russian Federation, when it has the responsibility, if necessary, to question the person concerned, present at the hearing, or to request additional information, the investigating chamber has not justified its ruling in accordance with Articles 8 of the European Convention on Human Rights and 593 of the Code of Criminal Procedure;

(3) whereas it is a disproportionate infringement of the detainee's religious freedom to subject the specific diet for their religion to the purchase or delivery of the necessary products; whereas, in holding to the contrary, the investigating chamber infringed Article 9 of the European Convention on Human Rights and Article 593 of the Code of Criminal Procedure."

Statement of reasons

Court's response

6. In giving a favourable advisory opinion to the extradition of the applicant, the ruling under appeal opens by stating that, with regard to the risks of violation of Articles 8 and 9 of the European Convention on Human Rights, the Russian authorities have solemnly undertaken, in the letter attached to the request for extradition, to respect the fundamental rights and freedoms guaranteed by the European Convention on Human Rights.
7. The judges continue by holding that, with regard to the risk of infringement of private and family life caused by the conditions of pre-trial detention of Mr [N] in Russia, the Russian authorities recalled that the acts for which the arrest warrant was issued were committed in the region of [Address 1] and are being prosecuted in that city, that the person of interest will be provisionally detained at the SIZO-1 remand centre, where visits are permitted and that he is using as an argument, without reason, the distance between said centre and the place of residence of his family in the territory of the Russian Federation.
8. They further consider that, with regard to the risk of infringement of freedom of thought, conscience and religion due to the fact that the person concerned will not be able to benefit in detention from food in accordance with the precepts of his religion, he will be able to purchase the necessary products or receive them by parcel.
9. Since the delivery of the investigating chamber's ruling, the Russian Federation has been excluded from the Council of Europe and, according to its resolution of 22 March 2022, the European Court of Human Rights has declared that, on the one hand, the Russian Federation ceases to be a High Contracting Party to the European Convention on Human Rights as from 16 September 2022 and, on the other, it retains jurisdiction to deal with petitions against it concerning actions and omissions occurring until 22 September 2022 and that could constitute a violation of the Convention.
10. It follows that, in accordance with the fundamental rights and freedoms guaranteed by the European Convention on Human Rights, the undertakings made by the Russian authorities concerning Mr [N], if he were extradited, are null and void.

11. Notwithstanding these new circumstances, the extradition request need not be reconsidered for the following reasons.
12. The European Convention on Human Rights does not govern the actions of a third State, nor does it purport to require Contracting Parties to the Convention to impose its rules on said State. Article 1 (art. 1) cannot be read as justifying a general principle to the effect that, notwithstanding its extradition obligations, a Contracting State may not surrender an individual unless satisfied that the conditions awaiting him in the country of destination are in full accord with each of the safeguards of the Convention. (ECHR, ruling of 7 July 1989, [S] v. [Address 2], No. 14038/88, § 86).
13. The decision of a State party to the European Convention on Human Rights to extradite a person may hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of the death penalty (ECHR, ruling of 2 March 2010, [Z] and [J] v. [Address 2], No. 61498/08, §§ 123 and 140-143), or being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country (ECHR, ruling of 7 July 1989, *supra*, § 91).
14. The same applies with regard to Article 6 of the Convention when there are grounds to believe that the person will be exposed to a risk of flagrant denial of justice (ECHR, ruling of 7 July 1989, *supra*, § 113).
15. However, the applicant only claims a risk of infringement, in the territory of the Russian Federation, of his right to personal and family life and religious freedom, which are guaranteed only to persons falling within the jurisdiction of the States parties to the Agreement in accordance with Articles 8 and 9, respectively, of the said convention, except in the case, not alleged in this case, of religious persecution liable to involve treatment contrary to Article 3.
16. Consequently, the three parts of the plea are irrelevant.
17. It follows that, in terms of form, the ruling meets the essential conditions for its legal application.
18. Furthermore, the ruling has been handed down by an investigating chamber that has jurisdiction and was composed in accordance with the law, and due process was observed.

Operative part of the ruling

ON THESE GROUNDS, the Court:

DISMISSES the appeal;

Thus decided by the criminal chamber of the *Cour de cassation* (Court of Cassation) and pronounced by the President on the thirteenth day of the month of December of the year two thousand and twenty-two.

President : Mr Bonnal

Advocate-general referee : Mr Aubert

Judge : Ms Labrousse

Lawyer(s) : SCP Zribi and Texier

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Translated rulings