

Clarification of the conditions of application of article 604, b) of the EU-UK Trade and Cooperation Agreement in the event of a European arrest warrant issued by the UK authorities (Ruling n° 1607 – 22-86.162)

23/11/2022



Ruling No. 1607

DISMISSAL

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

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

OF 23 NOVEMBER 2022

Mr [B] [M] [X] brought an appeal against the ruling of the investigating chamber of the *Cour d'appel* (Court of Appeal) of Bordeaux of 18 October 2022, which authorised his extradition to the judicial authorities of the United Kingdom in fulfilment of a European arrest warrant.

A motion was filed.

Concerning the report by Mr Pauthe, judge, the comments made by SCP Waquet, Farge and Hazan, lawyer of Mr [B] [M] [X], and the submissions of Mr Valat, advocate-general, after discussion in the public hearing of 23 November 2022, attended by Mr Bonnal, President, Mr Pauthe, judge-rapporteur, Ms de la Lance, judge of the chamber, and Ms Coste-Floret, 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. On 6 October 2022, Mr [B] [M] [X], a British national, was notified of a European arrest warrant issued on 9 December 2020 by the judicial authorities of the United Kingdom for criminal proceedings for acts characterised as criminal association with a view to supplying a certain quantity of cocaine, a controlled category-A substance, and for possession of narcotics.
3. He appeared before the investigating chamber on 9 June 2022 and did not consent to his extradition. He was placed under judicial supervision on the same day.

Pleas

Review of the plea

Statement of plea

4. The plea criticises the ruling under appeal insofar as it declared regular and applicable the arrest warrant issued by District Judge Matthew of Bristol Magistrates Court on 9 December 2020, in light of a national arrest warrant

issued on 27 February 2017 against Mr [X] for criminal proceedings for acts of criminal association with a view to supplying a Class-A drug, namely cocaine, between 17 November 2015 and 15 February 2016 and possession of drugs with an intention to supply, on 4 February 2016, ordered the execution of the above-mentioned arrest warrant and the extradition of Mr [X] to the judicial authorities of the United Kingdom, stated that extradition is subject to the judicial authorities of the United Kingdom's commitment to apply Article 604(b) of the Agreement of 24 December 2020, and maintained Mr [X] under judicial supervision until the implementation of this Decision, when:

"(1) whereas, under the terms of Article 597 of the Agreement of 24 December 2020 between the European Union and the United Kingdom, "cooperation through the arrest warrant" implemented by Article 596 of said Agreement " shall be necessary and proportionate, taking into account the rights of the requested person and the interests of the victims, and having regard to the seriousness of the act, the likely penalty that would be imposed and the possibility of a State taking measures less coercive than the surrender of the requested person "; on the one hand, if there is no victim, this criterion must be taken into account in light of the situation of the wanted person; on the other hand, the seriousness of the act must be assessed in the light of the acts actually attributed and not in that of only the classification that can be attributed to them; it follows, in this case, from the warrant, the documents relevant to the proceedings and the findings of the rulings that there are no victims, no complaints, nor any particular interest linked to the discovery at Mr [X]'s British home of traces of cocaine, materials that could be used as a cutting agents and accounting records; the principle of proportionality therefore had to be examined in particular in view of said circumstance; by failing to balance this criterion in its examination, the investigating chamber infringed article 597 of the Agreement of 24 December 2020, and article 695-52 of the Code of Criminal Procedure, in addition to article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(2) whereas the seriousness of the acts which must enter into the assessment of proportionality must be examined in view of the facts actually described in the warrant, and if necessary the objection of the person concerned, and not only in the light of an abstract classification which, under United Kingdom law, may lead to a sentence of life imprisonment; whereas, by examining the seriousness of the acts only in the light of that classification and the serious penalty incurred, and not in the light of their material reality, and without explaining the pleas of the person concerned, who argued that he had indeed experienced "a bad past" from which he had fully recovered upon leaving Great Britain, the investigating chamber did not correctly assess the principle of proportionality and again infringed the aforementioned texts, in addition to Article 593 of the Code of Criminal Procedure;

(3) whereas, before granting conditional referral, in particular under the condition of execution of the sentence possibly delivered in France, the investigating chamber must ensure that this condition has been accepted by the requesting State; by absolutely failing to ensure the United Kingdom's prior agreement on this point, the investigating chamber exceeded its powers and infringed Article 604, b) of the Agreement of 24 December 2020, in addition to Article 695-52 of the Code of Criminal Procedure."

Statement of reasons

Court's response

Under the terms of Article 597 of the Trade and Cooperation Agreement between the European Union and the United Kingdom, dated 24 December 2020 and applicable to the case, cooperation through the arrest warrant shall be necessary and proportionate, taking into account the rights of the requested person and the interests of the victims, and having regard to the seriousness of the act, the likely penalty that would be imposed and the possibility of a State taking measures less coercive than the surrender of the requested person particularly with a view to avoiding unnecessarily long periods of pre-trial detention.

5. According to Article 604, b) of this Agreement, If a person who is the subject of an arrest warrant for the purposes of prosecution is a national or resident of the executing State, the surrender of that person may be subject to the condition that the person, after being heard, is returned to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing State.
6. To dismiss Mr [X]'s pleas on the grounds of a disproportionate infringement of the right to private and family life, guaranteed by Article 8 of the European Convention on Human Rights, and authorising his extradition to the judicial authorities of the United Kingdom, the ruling under appeal, after finding that the legal conditions for double criminality were met, states that Mr [X], a British citizen, has been living in France since 2016, and benefits from a residence permit that is valid until November 2025, that he is married and that the couple has three children, born in France in 2017, 2018 and 2021, where the two eldest children are at school.
7. The judges establish that Mr [X], who has worked regularly since 2016, is currently employed as a mechanic with an open-ended employment contract signed on 11 July 2022, while his wife is employed as a part-time chef.
8. They consider that the extradition of Mr [X], professionally and socially included in France, would have serious consequences for his family and his own family and professional life.
9. They note, however, that the acts that are the subject of the proceedings are of particular seriousness in view of the life imprisonment that is incurred, the central role played by Mr [X] in the trafficking of cocaine, a highly dangerous substance, the extent of which must be assessed, taking into account the volumes discovered at his home that may be sold after they had been cut.
10. Lastly, they note that the search was carried out on 4 February 2016 at Mr [X]'s home, when he had left the United Kingdom to come to France with his wife in the same year.
11. They conclude from the above that the extradition requested is proportional in view of the extreme objective seriousness of the acts of which Mr [X] is accused.
12. On the basis of these statements, which are the result of its independent interpretation, it follows that the extradition of Mr [X] to the United Kingdom judicial authorities does not disproportionately infringe the right to personal and family life, the investigating chamber justified its decision without disregarding the terms of the Agreement of 24 December 2020 on Cooperation between the European Union and the United Kingdom.
13. Moreover, by extraditing Mr [X] to the judicial authorities of the United Kingdom in view of the latter's application of Article 604, b) of the above-mentioned Agreement, which does not subject the execution of an arrest warrant for criminal proceedings in the issuing State to a firm commitment by the issuing judicial authority whereby any sentence imposed on the wanted person will be served in the territory of the executing State, the investigating chamber has not disregarded the provisions referred to in the plea.
14. As a result, the plea must be dismissed.
15. Finally, the ruling has been handed down by an investigating chamber with jurisdiction, composed in accordance with the law, and the procedure was in order.

Operative part of the ruling

ON THESE GROUNDS, the Court:

DISMISSES the appeal;

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

President : Mr Bonnal
Advocate-general : Mr Valat
Judge : Ms de la Lance
Lawyer(s) : SCP Waquet, Farge and Hazan



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