

# Capture of images on the public highway: no violation of Article 8 of the ECHR (Ruling n° 526 – 22-86.186)

10/05/2023



Ruling No. 526

**Dismissal**

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

## **RULING OF THE CRIMINAL CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 10 MAY 2023**

Mr [R] [K] lodged an appeal against the ruling of 10 May 2022 delivered by the investigating chamber of the *cour d'appel* (Court of Appeal) of Douai, which, in the investigation against him concerning, *inter alia*, theft as part of an organised gang, arbitrary arrest, kidnapping, detention or sequestration as part of an organised gang, criminal association, unlawful entry, repeated offence, and concealment, ruled on his application for annulment of documents in the proceedings.

By order of 8 December 2022, the President of the criminal chamber ordered the immediate examination of the appeal.

A written submission was filed.

On the report of Ms Thomas, judge, the observations of SCP Waquet, Farge and Hazan, lawyers of Mr [R] [K], and the submissions of Mr Lagauche, advocate-general, after debate in the public hearing of 28 March 2023 in the presence of Mr Bonnal, President, Ms Thomas, reporting judge, Ms Labrousse, 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. Charged with the above on 18 June 2021, Mr [R] [K] filed a petition for annulment of acts and documents in the proceedings on 19 October.

Examination of the pleas

Examination of the pleas

Concerning the first plea

Statement of plea

3. The plea objects to the ruling under appeal rejecting Mr [K]'s petition for annulment, requesting the investigating chamber to declare null and void the taking of images taken on public thoroughfares by means of video, whereas:

"(1) There may be interference by a public authority in the exercise of the right to privacy only insofar as such interference is, *inter alia*, provided for by law. This is so with the capture of a person's image on the public highway, provided that the capture is accompanied by the recording, including photographic, of the captured images. In this case, the police had installed a discreet surveillance operation on a street, comprising a camcorder, installed near Mr [K]'s car, in order to extract various images that were appended to the official transcript as photographic images, the investigating chamber noting "[that] no text provides for this situation in any specific way"; however, by holding that these pictures

"did not [constitute] in themselves an interference in privacy, as defined in Article 8 of the European Convention on Human Rights, the framework of the preliminary investigation under the supervision of the public prosecution and the aim pursued of finding evidence of offences of organised gang theft and sequestration was legal, appropriate and proportionate", after having found that they had allowed recordings "to extract photographs that will appear only in the proceedings", from which it resulted that, as an infringement of Mr [K]'s right to privacy, they should be specifically authorised and governed by law, the investigating chamber did not draw the legal consequences of its own findings and infringed the preliminary article and Article 593 of the Code of Criminal Procedure, together with Article 8(2) of the European Convention on Human Rights.

(2) At the stage of the preliminary investigation or *flagrante delicto*, the Public Prosecutor has the sole power, pursuant to Articles 39-3 and 41 of the Code of Criminal Procedure, to have video surveillance carried out on the public highway under his effective control and in accordance with the methods he authorises in order to obtain evidence of violations of criminal law. In this case, the investigating chamber noted that "after locating where the stolen and falsely registered [Registration 2] Mercedes GLA was located [Address 3], the police set up a discreet surveillance operation near the car; [that] at a specific time, they decided to record what they saw by means of a camcorder in order to extract various images that were appended to the official transcript in the form of photographs"; that it followed that the pictures in question had been taken only by the police force and on their own initiative, and not by the Public Prosecutor, under his control and in accordance with the methods he defined; that, in refusing to pronounce their annulment, the investigating chamber did not draw the conclusions from its own findings and infringed the aforementioned texts, together with the preliminary articles and 593 of the Code of Criminal Procedure, and Article 8(2) of the European Convention on Human Rights."

Statement of reasons

## Court's response

4. In rejecting the request that images of various individuals taken on public thoroughfares be declared inadmissible, the ruling under appeal begins by recalling that at 14:00 on 19 November 2020, the investigators, having located a wanted vehicle, set up a surveillance operation and, at one point, decided to record the scenes they were observing with a camcorder in order to extract images that they then appended to the official transcript of the surveillance operation.

5. The judges stated that the pictures were taken on the public highway on a non-continuous basis, as the camera in question was not fixed or permanently installed on the site or in permanent operation due to the intermittent presence of the investigators.

6. In addition, they note that the capture of images and their use do not constitute either a systematic collection of data or an invasion of privacy.

7. In so ruling, and leaving aside the other reasons provided, the investigating chamber did not disregard any of the legal provisions cited in the ground for review.

8. The collection and recording of the image of a person located in a public place by a public authority does not in itself constitute an interference in the exercise of that person's right to privacy, since only the permanent or systematic recording of visual data concerning them may lead to an infringement of the right in question.

9. In the case at hand, the recording, by means of a camcorder, of a scene observed by the police for the purposes of their investigation, cannot be treated as a video surveillance operation and, since it does not permanently or systematically collect and record the acts and gestures of the person concerned when he is in a public place, it cannot be

regarded as interference with privacy rights.

10. The plea must therefore be dismissed.

## Reviewing pleas

### On the second plea

#### Statement of plea

11. The plea objects to the ruling under appeal rejecting Mr [K]'s petition for annulment, having asked the investigating chamber to declare the geolocation of the Citroën vehicle registered as [Registration 1] null and void, where "a police officer who, on his own initiative, installs a technical means intended to locate a person, car or any other object in real time must immediately inform the Public Prosecutor or the Investigating Judge and justify, in his subsequent application for authorisation, the imminent risk of deterioration of evidence or serious harm to persons and property; that by simply concluding that "the reasoning for the decision is the responsibility of the judge when drafting the decision ordering the continuation of the operation" and "that [it] was therefore not up to the police officer who set up the geolocation operation to give reasons for his decision", and by declaring the geolocation operations valid since the only authorisation given by the public prosecutor at the time was sufficiently reasoned, the investigating chamber did not legally justify its decision in accordance with Articles 593 and 230-35 of the Code of Criminal Procedure."

Statement of reasons

#### Court's response

12. To set aside the request that the emergency geolocation of the Citroën vehicle be declared inadmissible, the ruling under appeal stated that the official transcript sent to the judge was simply limited to informing the Public Prosecutor, that it was not up to the police officer that set up the geolocation operation to justify his decision, and that the reasoning relating to the imminent risk of deterioration of the evidence or serious damage to persons or property was up to the judge when drafting his decision ordering the continuation of the operation.

13. The judges added that the judge's reasoning was sufficient in accordance with legal requirements.

14. In so ruling, the investigating chamber did not disregard the provisions invoked in the plea.

15. Indeed, while the police officer has to justify, in the information provided to the judge, which can be provided by any means of communication, the existence of the imminent risk of deterioration of evidence or serious harm to persons or property that led him to set up an emergency geolocation operation in real time, the law does not require him or her to establish a reasoned written statement for said purpose, but only to inform the judge of the facts that will allow the latter to assess the existence of this risk and, if he considers that said risk does indeed exist, to set out the factual circumstances thereof in his decision authorising the continuation of the measure.

16. Since the decision of the Public Prosecutor to authorise the continuation of the measure was not criticised and stated the factual circumstances establishing the existence of an imminent risk of loss of evidence, it must be concluded that

the police officer had fulfilled his obligation to provide reasons for the geolocation.

17. It is therefore irrelevant that the evidence justifying the risk in question does not appear in the official transcript sent to the judge or in any other document drawn up by the police officer to reflect the measure at issue.

18. The plea must therefore be dismissed.

19. Moreover, the ruling is procedurally correct.

Operative part of the ruling

**FOR THESE REASONS, the Court:**

DISMISSES the appeal;

Thus decided by the criminal chamber of the *Cour de cassation* (Court of Cassation) and pronounced by the president in the public hearing of the tenth day of the month of May of the year two thousand and twenty-three.

**President : Mr Bonnal**  
**Reporting judge : Ms Thomas**  
**Advocate-general : Mr Lagauche**  
**Judge : Ms Thomas**  
**Lawyer(s) : SCP Waquet, Farge and Hazan**

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