

# Driving after using narcotics and cannabis derivatives whose sale is authorised (Ruling n° 817 – 22-85.530)

21/06/2023



Ruling No. 817

**Partial Quashing**

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

## **RULING OF THE CRIMINAL CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 21 JUNE 2023**

The Prosecutor-General at the *cour d'appel* (Court of Appeal) of Rouen lodged an appeal against the ruling delivered by the Criminal Chamber of that court, dated 5 September 2022, which, after acquittal of Mr [P] [J] for driving after drug use, ordered him to pay a fine of 400 euros, 300 euros of which was suspended, for a minor offence against the Highway Code.

A written submission was filed.

On the report of Ms Guerrini, judge referee, and the submissions of Ms Bellone, advocate-general referee, after debate in the public hearing of 24 May 2023, attended by Mr Bonnal, President, Ms Guerrini, reporting judge, Mr de Larosière de Champfeu, 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. The following results from the ruling under appeal and the documents of the proceedings.
2. By judgment of 21 January 2021, the Criminal Court found Mr [P] [J] guilty of driving a car while using narcotics, travelling at a speed of at least 40 km/h and less than 50 km/h, and gave him a two-month suspended prison sentence, a six-month suspension of his driving license, and a fine of 50 euros.
3. Mr [J] appealed against this decision, and the public prosecution lodged a cross-appeal.

### **Reviewing pleas**

#### **Review of the plea Statement of plea**

4. This plea is based on the violation of Article L. 235-1 of the Traffic Code. 5. The plea criticises the ruling under appeal in that Mr [J] was acquitted of the charge of driving after using narcotics on the grounds that the toxicology report makes no mention of any tetrahydrocannabinol (THC) levels, and that it was not investigated whether the cannabidiol (CBD) the person concerned said he had consumed exceeded the permitted THC content, whereas Article L. 235-1 of the Highway Code criminalises the sole act of driving after using narcotics, without reference to a specific dose of narcotics to be found in the offender's saliva or blood tests. The executive order of 13 December 2016 that was in force at the time of the facts, which sets out the methods used to detect substances that demonstrate the use of narcotics, and the tests and examinations provided for in the Highway Code, refers to a detection threshold and not a criminalization threshold. Moreover, in accordance with the provisions of Article L. 235-2 of the Traffic Code, the use of narcotics can only be established by means of blood or saliva tests to the exclusion of any other tests, such as the search for and determination of tetrahydrocannabinol that may be contained in the CBD found during the offender's roadside test and that may be the one he says he consumed.

## Statement of reasons

### Court's response

Having examined Article L. 235-1 of the Traffic Code and Annex IV to the amended executive order of 22 February 1990, adopted for the application of Article L. 5132-7 of the Public Health Code:

6. The first of these provisions criminalises the sole act of driving after having used narcotics, this use being established by a blood or saliva test, regardless of whether the level of narcotics thus revealed is below the minimum threshold provided for by the executive order in force at the time of the acts, laying down the testing methods for substances that indicate the use of narcotics, which is a detection threshold and not a criminalization threshold.

7. According to the second provision, tetrahydrocannabinol is a substance classified as narcotic.

8. In order to acquit Mr [J] of the offence of driving after the use of narcotics, the ruling under appeal notes that, with regard to the presence of cannabis in the defendant's saliva, the toxicology report, which refers to it, does not mention any THC levels, and that, furthermore, no investigation was carried out to determine whether or not the CBD consumed by the defendant exceeded the permitted tetrahydrocannabinol content, which was set at less than 0.20% at the date of the facts.

9. The judge concludes that it follows from these elements and the statements of the accused that neither the material element nor the intentional element of the offence are established with any certainty.

10. In so ruling, the *cour d'appel* (Court of Appeal) disregarded the aforementioned texts, since the authorisation to market certain cannabis derivatives, whose content in delta 9 tetrahydrocannabinol, a substance itself classified as a narcotic by the above-mentioned executive order, does not exceed 0.30%, has no bearing on the offence of driving after using narcotics, this offence being constituted if it is established that the accused drove after having used a substance classified as a narcotic, regardless of the dose absorbed.

11. The ruling is therefore subject to quashing.

#### Scope and consequences of the quashing

12. The quashing will be limited to the acquittal of the defendant of the offence of driving after the use of narcotics and all the penalties imposed. The conviction for the offence of speeding, against which the plea made no appeal, will be upheld.

#### Operative part of the ruling

### FOR THESE REASONS, the Court:

QUASHES and sets aside, the abovementioned ruling of the *Cour d'appel* (Court of Appeal) of Rouen, dated 5 September 2022, but only with regard to those provisions which acquitted the accused of the serious offence of driving after drug use and those relating to penalties, all other provisions being expressly maintained;

And for a new ruling, in accordance with the law, within the limits of the reversal hereby pronounced,

REMANDS the case and the parties to the *cour d'appel* (Court of Appeal) of Rouen, otherwise composed, to that designated by a special decision taken in chambers;

ORDERS the printing of this ruling, its transcription in the registers of the Registrar of the *cour d'appel* (Court of Appeal) of Rouen and its annotation in the margin or at the bottom of the partially quashed ruling;

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 twenty-first day of the month of June of the year two thousand and twenty-three.

President : Mr Bonnal  
Reporting judge : Ms Guerrini  
Advocate-general referee : Ms Bellone

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