

Application of the Extradition Treaty between France and United States and conditions of detention under Article 3 of the ECHR: provisional arrest of a person pending a request for extradition

30/03/2021



Extradition Treaty between France and United States : possibility for the prosecutor general to request in urgent cases the provisional arrest of a person pending a request for extradition. The convict's lack of warm clothing cannot be sufficient to constitute *prima facie* evidence of degrading conditions of detention, under Article 3 of the European Convention on Human Rights, unless they are described with sufficient credibility, accuracy and timeliness

Ruling no 541 of 30 march 2021 (21-80.421) – Cour de cassation (Court of Cassation) – Criminal Chamber

– ECLI:FR:CCAS:2021:CR00541

Dismissed



Only the french version is authentic

Summary

1) When an extradition agreement authorises the requesting State to seek, in case of emergency, the provisional arrest of a person pending a request for extradition, the prosecutor-general with territorial jurisdiction may order the provisional arrest of the person, pursuant to Article 696-23 of the Criminal Procedure Code, the provisions of which are exclusive of those of Articles 696-10 et seq. of the same Code.

It follows that the Investigating Chamber has no jurisdiction to give its opinion on such a request and need not be referred to for that purpose.

Consequently, the Investigating Chamber, which refuses to declare arbitrarily detained the person arrested on a provisional basis, in extradition custody pending the extradition request, is justified in its decision, as the sixty-day period provided for in the Extradition Treaty between France and the United States of America signed on 23 April 1996 for submitting such a request has not expired.

2) The ordinary court is under obligation to guarantee a preventive and effective remedy to degrading treatment of a person placed in detention in such a way as to put an end to the infringement of Article 3 of the European Convention on Human Rights. It is also incumbent on this court, as guardian of individual liberty, to ensure that provisional detention is, in all circumstances, carried out in conditions respecting the dignity of the person and to ensure that this loss of liberty is free of any inhuman and degrading treatment. Should the claimant describe their personal detention conditions with sufficient credibility, accuracy and timeliness as to constitute prima facie evidence of their degrading nature, the court shall be obliged to carry out further investigations to assess the veracity of these conditions.

These principles, stated for the benefit of persons remanded in detention on remand, also apply to persons placed in extradition custody.

Accordingly, in justification of its decision to a request for the release of a person placed in extradition custody on the grounds of inhuman or degrading conditions of detention, the Investigating Chamber states that the person must provide a description of their personal detention conditions that is sufficiently credible, accurate and recent to constitute a prima facie case and that this has not been the case.

Appellant(s): Mr A... X...

Facts and procedure

1. The following results from the ruling under appeal and the documents of the proceedings.
2. On 17 August 2020, the US Government filed a request for provisional arrest for extradition against Mr X..., a Russian national. The request was based on a federal judge's arrest warrant of 17 August 2020 for criminal prosecution on the charge of concealment of money laundering, which was committed in the United States at least since May 2018, as provided for in 18 U.S.C. §1956(a)(1)(B)(i), with a penalty of 20 years' imprisonment.
3. On 15 November 2020, Mr X... was arrested at Roissy-Charles de Gaulle airport in France, travelling from Brazil.
4. On 16 November 2020, the prosecutor-general notified Mr X... of the request for provisional arrest and questioned him. The latter stated that he did not consent to being handed over to the requesting authorities.
5. On the same day, Mr X... was placed in extradition custody by the magistrate delegated by the first president of the cour d'appel (Court of Appeal).
6. On 14 December 2020, Mr X... made an application for release.

Reviewing pleas

On the second plea

7. It is 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

8. The plea objects to the ruling under appeal insofar as the latter considered Mr X... was not arbitrarily detained. Article 696 of the Criminal Procedure Code provides that the conditions, procedure and effects of extradition are determined by this code in the absence of an international convention stipulating otherwise, or if these do not cover specific points, and in this case, the procedure is governed by the bilateral extradition convention between France and the United States, signed in Paris on 23 April 1996. Article 13 of this Convention provides for a maximum period of sixty days within which the United States must submit the full file to France, failing which the provisional arrest is terminated. This period is longer than the thirty-day period provided for in Article 696-24 of the Criminal Procedure Code. Articles 696-13 and 696-15 of the Criminal Procedure Code apply in the absence of a specific provision in the bilateral convention in question. Mr X... was presented to the prosecutor-general on 16 November 2020 and declared that he did not consent to his extradition. As a result, Article 696-15 of the Criminal Procedure Code, according to which he should have appeared before the Investigating Chamber within ten working days from that date, was disregarded.

Court's response

9. In order to rule that Mr. X... was not arbitrarily detained, the Investigating Chamber stated that it follows from Article 696 of the Criminal Procedure Code that the provisions of that Code relating to extradition apply only in the absence of an international convention providing otherwise. In the present case the applicable text is Article 13 of the Extradition Treaty between France and the United States of America signed in Paris on 23 April 1996, according to which a Contracting State may, in urgent cases, request the provisional arrest of the requested person pending transmission of the extradition request. The provisional arrest would be terminated if, within sixty days, the requested State did not

receive the formal extradition request.

10. The judges further stated that this treaty provision does not contain any ambiguity or imprecision and is solely applicable to the request for provisional arrest concerning Mr X..., as Article 696-15 of the Criminal Procedure Code only concerns the extradition request once it has been transmitted.

11. They conclude that Mr X..., arrested on 15 November 2020, presented to the prosecutor-general on 16 November 2020, notified of the reasons for his arrest, informed of the sixty-day deadline for transmitting the extradition request set out in the treaty, and placed in extradition custody by a court with which he thus had access, underwent due process.

12. In so ruling, the Investigating Chamber did not disregard the text cited in the plea.

13. As a matter of course, when an extradition agreement authorises the requesting State to seek, in urgent cases, the provisional arrest of a person pending the transmission of a request for extradition, the prosecutor-general with territorial jurisdiction may order the provisional arrest of the targeted person, in accordance with Article 696-23 of the Criminal Procedure Code, the provisions of which are exclusive of those of Articles 696-10 et seq.

14. As a result, the Investigating Chamber did not have jurisdiction to give its opinion on such a request and did not need to receive referral for that purpose.

15. Consequently, the plea must be dismissed.

On the third plea

Statement of plea

16. The plea objects to the ruling under appeal for having considered that Mr. X... was not subjected to degrading conditions of detention. The Fresnes prison is known for being overcrowded, lacking guards, and for the presence of vermin. Upon his arrival, the person in question, who was lightly dressed from having arrived from the southern hemisphere where it was summer, tried to ask for warm clothing. However, due to the language barrier and the unwillingness of the prison, he was not provided with any suitable clothing either at that time or subsequently, infringing on Article 3 of the European Convention on Human Rights.

Court's response

17. It follows from the case law of the Cour de cassation (Court of Cassation) (Crim, 8 July 2020, no 20-81.739, currently pending publication) that the ordinary court is under obligation to guarantee a preventive and effective remedy to degrading treatment of a person placed in detention in such a way as to put an end to the infringement of Article 3 of the European Convention on Human Rights. It is also incumbent on this court, as guardian of individual liberty, to ensure that provisional detention is, in all circumstances, carried out in conditions respecting the dignity of the person and to ensure that this loss of liberty is free of any inhuman and degrading treatment. Should the claimant describe their personal detention conditions with sufficient credibility, accuracy and timeliness as to constitute *prima facie* evidence of their degrading nature, the court shall be obliged to carry out further investigations to assess the veracity of these conditions.

18. These principles, stated for the benefit of persons remanded in provisional custody, also apply to persons placed in extradition custody.

19. To dismiss the plea of degrading treatment during Mr. X...'s detention at the Fresnes prison where he was placed under extradition custody, the Investigating Chamber stated that to be classified as degrading, the conditions of detention must be such as to create feelings of fear, anxiety and inferiority in the victim. The object of such treatment would be to humiliate, debase, and possibly break his or her moral and physical resistance (ECHR, ruling of 19 April 2001, *Peers v. Greece*, no 28524/95, §75). It stated that the person concerned must give a description of his or her personal

detention conditions with sufficient credibility, accuracy and timeliness as to constitute prima facie evidence.

20. The judges added that the difficulty Mr X... experienced in obtaining warm clothes was not supported by any evidence to constitute and detail this incident and its outcome. The statement of the case indicated that prison administration had approved providing clothing. However, assuming this incident actually occurred, it would not in itself sufficiently constitute degrading treatment during detention.

21. In so ruling, the Investigating Chamber did not disregard the treaty text referred to in the plea, for the following reasons.

22. On the one hand, Mr X... restricted his statements to describing general detention conditions at the Fresnes prison as previously observed in terms of overcrowding, lack of guards, and the presence of vermin. He did not give any details of his personal and current conditions of detention in this respect.

23. On the other hand, if the Investigating Chamber wrongly dismissed the appellant's allegations about lacking warm clothing, by stating that it did not constitute inhuman or degrading treatment during detention, the ruling does not warrant censure since the person in question restricted his statements to describing how he was lightly dressed while travelling between Brazil and Russia as he came from the southern hemisphere where it was summer. Therefore, he did not give a sufficiently accurate and credible description of his personal detention conditions to constitute prima facie evidence of their inhuman or degrading nature, justifying checks on his degree of deprivation.

24. Thus, the plea must still be dismissed.

25. Moreover, the ruling is procedurally correct.

ON THESE GROUNDS, the Court:

DISMISSES the appeal;

President: Mr Soulard
Reporting Judge: Mme Thomas
First advocate-General: Mr Desportes

[> Read the french version](#)