

Detention on remand – Dignity of detention conditions – Application in time of the law of 8 April 2021 creating an autonomous and exclusive remedy.

20/10/2021



Ruling of 20 October 2021, appeal no. 21-84.498

Ruling of the Criminal Chamber of 20 October 2021, appeal no. 21-84.498

Pre-trial detention

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

RULING OF THE *COUR DE CASSATION* (COURT OF CASSATION), CRIMINAL CHAMBER, OF 20 OCTOBER 2021

Mr [W] [U] lodged appeal against the ruling delivered on 24 June 2021 by the *cour d'appel* (Court of Appeal) of Bordeaux, which, in the investigation against him for, inter alia, drug offences and repeated criminal conspiracy, and handling stolen goods, confirmed the order of the liberty and detention J extending his detention on remand.

A personal statement was produced.

On the report of Mr Pauthe, Judge, and the conclusions of Mr Bougy, Advocate-General, after the arguments of the public hearing of 13 October 2021, at which were present Mr Soulard, President, Mr Pauthe, Reporting Judge, Ms de la Lance, Ms Planchon, Mr d'Huy, Mr Wyon, Mr Turcey, Mr de Lamy, Judges of the Chamber, Ms Pichon, Mr Ascensi, Ms Fouquet, Ms Chafaï, Judge Referees, Mr Bougy, Advocate-General, and Ms Boudalia, Chamber Registrar, the Criminal Chamber of the *Cour de cassation* (Court of cassation), composed of the above-mentioned President and Judges, having deliberated in accordance with the law, delivered the present ruling.

Facts and procedure

1. According to the ruling under appeal and to the submissions in the proceedings.
2. Mr [U] was charged with the above-mentioned offences and was placed under a detention warrant on 23 October 2020.
3. His detention was extended by order of Liberty and detention Judge on 10 June 2021.
4. He appealed this decision.
5. Before the investigating chamber, Mr. [U] argued, inter alia, that his conditions of detention were degrading.

Reviewing plea

For the first part of the plea

6. 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.

However on the second part of the plea

Statement of plea

7. The second part of the plea criticises the ruling under appeal in that it confirmed the order of the Liberty and detention Judge extending Mr [U]’s detention on remand, whereas, having received referral of the precise and current description given by Mr [U] of the conditions of his detention, which had been made credible by the report of *the “Contrôleur général des lieux de privation de liberté”* (Controller-General for Places of Deprivation of Liberty), the investigating chamber could not place the burden of proof on Mr [U]. By requiring him to demonstrate the undignified nature of his detention, the investigating chamber deprived its decision of a legal basis and infringed the preliminary Article, and Articles 144, 145-1 and 145-2 of the Criminal Procedure Code, as well as Articles 5, 6 and 13 of the European Convention on Human Rights.

Court’s response

Admissibility of the plea

8. Drawing the consequences of the J.M.B. and Others ruling of 30 January 2020 by the European Court of Human Rights, the *Cour de cassation* (Court of cassation), in application of Articles 3 and 13 of the European Convention on Human Rights, and in the absence of provisions in domestic law organising a preventive and effective remedy intended to put an end to unworthy conditions of detention, opened up the possibility for a detainee to invoke the inhuman or degrading nature of his or her conditions of detention in the course of litigation concerning pre-trial detention (Crim, 8 July 2020, *appeal* no. 20-81.739, published).

9. Following decision no. 2020-858/859 QPC of the Constitutional Council, of 2 October 2020, the legislator, by Act No. 2021-403 of 8 April 2021, which inserted an article 803-8 into the Criminal Procedure Code, which came into force on 1 October 2021, intended to institute an autonomous and exclusive remedy enabling any detainee who considers that he or she is being held in conditions that are contrary to his or her dignity, to refer the matter to the ordinary court in order to put an end to said conditions.

10. Consequently, the creation of this remedy defeats the purpose of the option generally allowed by the *Cour de cassation* (Court of cassation) due to the lack of law. This conclusion to be drawn from the new provisions does not prejudge what the *Cour de cassation* (Court of cassation) might decide if it were to review the effectiveness of the new remedy in the light of the requirements of the European Convention on Human Rights.

11. However, the arguments regularly raised before the investigating chamber before which the case is heard in the context of the litigation of pre-trial detention before 1 October 2021 must continue to be examined in the light of the principles established on 8 July 2020, unless the effectiveness of the right to a remedy in the cases in question is disregarded.

12. This is the case here.

Merits of the plea

In view of Article 593 of the Criminal Procedure Code:

13. It follows from this text that every ruling of the investigating chamber must include the reasons for the decision and respond to the essential points of the parties’ written submission. Insufficient or contradictory reasons are tantamount to their absence.

14. In order to reject the plea of degrading conditions of detention and to confirm the order of the Liberty and detention Judge extending the pre-trial detention, the ruling under appeal states that the factual data contained in the report on the conditions of detention in the Angoulême prison, drawn up by the *“Contrôleur général des lieux de privation de liberté”* (Controller-General for Places of Deprivation of Liberty) in December 2019, cannot correspond to the individual situation

of Mr [U] incarcerated in this establishment in December 2020.

15. The judges added that Mr [U] did not demonstrate that he himself had suffered the consequences of the exceptional nature of individual confinement that is noted in this report, which, however, confirmed that some detainees could request to be placed in isolation if they so wished.

16. In so ruling, the investigating chamber did not justify its decision, for the following reasons.

17. Having received a description from the applicant that referred to limited personal space in a cell shared with other prisoners, the presence of cockroaches and bedbugs, and particularly limited access to unheated showers with no privacy, the investigating chamber had to assess the precise, credible, and current nature of the description, without stopping at the fact that the report of the “*Contrôleur général des lieux de privation de liberté*” (Controller-General for Places of Deprivation of Liberty described conditions of detention prior to Mr [U]’s imprisonment, or requiring him to demonstrate that his personal conditions of detention were degrading.

18. Consequently, the decision must be quashed.

Scope and consequences of the quashing

19. As a consequence of the principle set out in paragraph 11 of this decision, the investigating chamber will have to rule in accordance with the principles set out in the above-mentioned ruling of 8 July 2020.

ON THESE GROUNDS, the Court:

QUASHES AND SETS ASIDE, in all its provisions, the above-mentioned ruling of the investigating chamber of the *cour d’appel* (Court of Appeal) of Bordeaux, dated 24 June 2021, and for it to be judged again, in accordance with the law;

REFERS the case and the parties to the investigating chamber of the *cour d’appel* (Court of Appeal) of Bordeaux, otherwise composed, to be designated by special decision taken in chambers;

ORDERS the printing of this ruling, its transcription in the registry of the investigating chamber of the *cour d’appel* (Court of Appeal) of Bordeaux and its mention in the margin or following the ruling that was set aside;

Thus carried out and decided by the *Cour de cassation* (Court of cassation), Criminal Chamber, and pronounced by the President on the twentieth of October, two thousand and twenty-one.

President : Mr Soulard

Reporting Judge : Mr Pauthe, Judge

Advocate- General : Mr Bougy

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