

Freedom of religion and judicial supervision: the exercise of a religious function (such as that of imam) may be prohibited under judicial supervision

04/11/2021



Ruling of 4 November 2021, appeal no. 21-85.144

Dismissal

RULING OF THE CRIMINAL CHAMBER OF 4 NOVEMBER 2021, APPEAL NO. 21-85.144

Pursuant to Article 138, 12° of the Criminal Procedure Code, a person placed under judicial supervision may be prohibited from exercising a professional or social activity when the offence was committed in the exercise or on the occasion of the exercise of that activity and when there is a risk that a new offence will be committed. The decision of the investigating chamber to impose this measure on an imam must be approved, since a religious function, even if it is voluntary, falls within the scope of this provision and meets the conditions as set out in §2 of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

No. H 21-85.144 F- B

No. 01457

GM

4 NOVEMBER 2021

DISMISSAL

Mr SOULARD, President,

F R E N C H R E P U B L I C

IN THE NAME OF THE FRENCH PEOPLE

RULING OF THE *COUR DE CASSATION* (COURT OF CASSATION), CRIMINAL CHAMBER, OF 4 NOVEMBER 2021

Mr [H] [K] lodged an appeal against the ruling of the Investigating Chamber of the *cour d'appel* (Court of Appeal) of Montpellier, dated 23 July 2021, which, in the investigation against him on charges of aggravated rape and aggravated sexual assault, partially reversed the order of the Investigating Judge placing him under judicial supervision.

A written submission was produced.

In the report of Mr de Lamy, Judge, the observations of SCP Waquet, Farge and Hazan, lawyer for Mr [H] [K], and the conclusions of Mr Petitprez, Advocate-General, after the arguments at the public hearing of 4 November 2021, at which were present Mr Soulard, President, Mr de Lamy, Reporting Judge, Ms de la Lance, Chamber Judge, and Mr Maréville, Chamber Registrar. Pursuant to Article 567-1-1 of the Criminal Procedure Code, 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 Criminal Procedure Code, delivered the present ruling after deliberating in accordance with the law.

Facts and procedure

1. The following results from the ruling under appeal and the documents of the proceedings.
2. Ms [O] [B] filed a complaint against her father-in-law, Mr [H] [K], who performs the function of imam, for sexual assault and rape that began when she was a minor.
3. By an order of 23 June 2021, the Investigating Judge placed Mr [K] under judicial supervision, subjecting him to several obligations.
4. The Public prosecutor appealed this order.

Reviewing plea

Statement of plea

5. The plea objects to the ruling under appeal insofar as it partially reversed the judicial supervision order by adding a prohibition to exercise the duties of imam pursuant to Article 138, 12° of the Criminal Procedure Code and a prohibition to exercise an activity involving regular contact with minors, when:

"1°/ in the context of judicial review, taking measures which may lead to prohibiting a person under investigation from exercising their professional activity presupposes that the offence was committed in the exercise or on the occasion of the exercise of a professional activity. By prohibiting Mr [K] from performing his imam duties in this case without considering whether this function could be considered a professional activity, the *cour d'appel* (Court of Appeal) did not justify its decision in the light of Article 138, section 2 (12°) of the Criminal Procedure Code.

2°/ The condition under which judicial supervision can be ordered, subjecting a person under investigation to the obligation not to engage in certain activities of a professional nature, is when the offence was committed during, or on the occasion of, the exercise of these activities and there is reason to believe that a new offence will be committed. It is up to the court issuing the measure to justify these two cumulative conditions. It is clear from the facts of the case that Mr [K] is accused of offences that were committed in a private setting, at his home, and on a member of his family. By failing to specify in what way the duties of an imam, which do not entail contact with children, had been and are likely to facilitate a recurrence of the alleged offence, the investigating chamber did not justify its decision under Article 138, section 2 (12°) of the Criminal Procedure Code.

3°/ The judge ruling on judicial reviews must ensure that issued measures do not disproportionately infringe on a fundamental freedom. In this case, by prohibiting Mr [K] from exercising his duty as an imam without ensuring that this prohibition did not disproportionately infringe on the exercise of his religion, the investigating chamber did not justify its decision under Article 9 of the European Convention on Human Rights

Court's response

6. In order to partially reverse the order placing Mr [K] under judicial supervision, adding a prohibition to exercise an imam's functions and a prohibition on engaging in an activity involving regular contact with minors, the judges noted that there were serious and corroborating evidence that the person charged took advantage of his duties as an imam and subjected his daughter-in-law to Ruqyahs (Muslim ritualistic healing) during which he abused her and engaged in touching and fondling in between these sessions.
7. In light of these statements, the investigating chamber correctly applied the text referred to in the plea for the following grounds.
8. Firstly, a religious function, even if it is voluntary, constitutes an activity of a professional or social nature according to the meaning of Article 138, 12° of the Criminal Procedure Code.
9. Secondly, the acts in question were committed in the context of the imam's duties and give reason to believe that a new offence may be committed.
10. Thirdly, the appellant cannot object to the issued prohibition as infringing Article 9 of the European Convention on Human Rights since it meets the conditions laid down in the second paragraph of that provision. The prohibition is provided for by law on the one hand, and it meets the objectives of protecting public order and security on the other. Lastly, it is proportionate in that it is temporary, that it is issued as a security measure, and that, apart from his duties as an imam, it does not infringe on his personal religious practices.

11. The plea is therefore unfounded.
12. As well, the ruling was handed down in accordance with due process.

ON THESE GROUNDS, the Court:

DISMISSES the appeal;

Thus decided by the *Cour de cassation* (Court of cassation), Criminal Chamber, and pronounced by the President the fourth of November, two thousand twenty one.

President : Mr Soulard

Reporting Judge : Mr de Lamy, Judge

Advocate-General : Mr Petitprez

Lawyer(s) : SCP Waquet, Farge and Hazan

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