

Ruling n°101 of 13 January 2021 (20-81.359) – Cour de cassation (Court of Cassation) - Criminal chamber - ECLI:FR:CCAS:2021:CR00101

Subsidiarity protection » and extradition : it is impossible to extradite an asylum seeker as long as he benefits from the “subsidiarity protection.

Criminal chamber

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Extradition

Quashing without referral

Summary

It follows from article 3 of the European Convention on Human Rights, article 696-15 of the Code of Criminal Procedure and article L 712-1 of the CESEDA that the investigating chamber which finds that the person sought runs the risk of being subjected to inhuman and degrading treatment in the event of extradition to his or her country of origin, must give an unfavourable opinion.

Such a risk is established when the person benefits from subsidiary protection and for as long as it has not been terminated.

Consequently, in giving a favourable opinion on the extradition request of the Albanian authorities, a ruling that holds that while the grant of subsidiary protection results in surrender of the sought person being prohibited for the duration of the protection granted, such provisional protective status does not affect the legality of the extradition request, must be quashed.

Appellant : Mr A.. X...

Facts and procedure

1. It follows from the ruling under appeal and the documents relevant to the proceedings that :
2. On 29 October 2019, Mr A.. X..., an Albanian national, was arrested in Annecy in execution of a search warrant relating to a request for provisional arrest by the Albanian authorities for the purpose of enforcing a suspended sentence of four years and eight months' imprisonment with probation handed down by the First Instance Court of Kukës on 9 November 2015 and confirmed by a ruling of the Shkodër Court of Appeal on 13 March 2017, for acts in relation to the production and sale of narcotic drugs committed in Krume (Albania) on 3 May 2015.
3. The suspended sentence was revoked by judgment of the same court on 15 January 2018, confirmed by ruling of the Shkodër Court of Appeal on 1 November 2018.
4. The request for provisional arrest was notified to the person concerned on 30 October 2019. Mr X... stated that he opposed his extradition. He was placed under judicial supervision.

Reviewing pleas

On the first plea

Statement of plea

5. The plea criticises the ruling under appeal in that it found, firstly, that Mr X... appeared “*with the assistance of Mrs B... Y... an Albanian language interpreter on the list of experts of the cour d’appel (Court of Appeal)*” (ruling p. 1), and secondly that he had been heard in his explanations “*with the assistance of Mrs C... Z..., an interpreter*” (ruling, p. 2), whereas “*the investigating chamber, whose contradictory findings do not make it possible to ascertain the identity of the interpreter having assisted Mr X... at the hearing, nor whether the interpreter was indeed registered on the list of experts or had been duly sworn in, deprived its decision of a legal basis in the light of Article 6 § 3 of the European Convention on Human Rights, Article 696-13 of the Code of Criminal Procedure, so that the ruling does not satisfy the essential conditions for its legal existence.*”

Court’s response

6. The ruling states, first of all, that the proceedings were conducted with the assistance of an Albanian-language interpreter, Ms B... Y..., who is on the Court of Appeal’s list of experts.

7. Furthermore the ruling mentions the assistance of Mrs C.. Z..., an Albanian language interpreter.

8. The ruling does not, however, incur censorship, since the Cour de cassation (*Court of Cassation*) was able to ascertain that the two interpreters mentioned above were in fact included on the list of experts attached to the cour d’appel (*Court of Appeal*) of Chambéry, drawn up for the year 2020.

9. The plea must therefore be rejected.

But on the third plea

10. The plea criticises the ruling under appeal in that it gave a favourable opinion regarding the extradition of Mr X... whereas :

“1°/ the general principles of extradition law prevent a person benefiting from subsidiary protection from being extradited to his or her country of origin for as long as this protection has not been terminated ; the investigating chamber, noting that the person sought had obtained the benefit of subsidiary protection and that such a situation resulted in his surrender being prohibited for the said period of protection, while at the same time going on to give an opinion in favour of extradition, exceeded its powers and infringed the aforementioned principles and Article 696-15 of the Code of Criminal Procedure, thus depriving its decision of the essential conditions of its legal existence ;

2°/ subsidiary protection was granted to the person sought on the basis of Article L. 712-1 b) of the Code on the Entry and Residence of Foreigners and the Right of Asylum on the basis of proven risks of being subjected to “torture or inhuman or degrading treatment or punishment”, by a decision of the National Court of Asylum of 16 October 2019 ; in failing to investigate whether the extradition of Mr. X... to his country of origin would expose him to a risk of torture or inhuman or degrading treatment or punishment within the meaning of Article 3 of the European Convention on Human Rights, the investigating chamber deprived its decision of a legal basis in the light of the latter text and, in so doing, deprived its decision of the essential conditions for its legal existence ; the case will be quashed without referral.”

Court’s response

In view of Article 3 of the European Convention on Human Rights, Article 696-15 of the Code of Criminal Procedure and Article L 712-1 of the CESEDA :

11. It follows from these texts that the investigating chamber which finds that the person sought runs the risk of being subjected to inhuman and degrading treatment in the event of extradition to his country of origin must give an unfavourable opinion.

12. Such a risk is established when the person is granted subsidiary protection and for as long as such protection has not been terminated.

13. In giving a favourable opinion on the Albanian authorities’ extradition request, the ruling under appeal held that the granting of subsidiary protection, justified in the present case by the production of a copy of receipt no. 38031 18152, drawn up in the name of Mr X., had the effect of prohibiting his surrender during the period of the protection granted.

14. It added, however, that this provisional protective status did not affect the legality of the extradition request.

15. In so ruling, the investigating chamber, infringed the above-mentioned articles and principles and failed to meet the essential conditions for its legal existence.

16. The quashing is therefore incurred on this count.

Scope and consequences of the quashing

17. There is no need to examine the other pleas. Since the Cour de cassation (*Court of Cassation*) is able to rule on the law pursuant to article L411-3 of the Judicial Code, there is no need to refer back the case.

ON THESE GROUNDS, and without it being necessary to examine the other pleas, the Court :

Quashes and sets aside, in all its provisions, the aforementioned ruling of the investigating chamber of the cour d'appel (*Court of Appeal*) of Chambéry, dated 30 January 2020 ;

Declares that there is no need to refer back the case ;

Issues an unfavourable opinion on the extradition request made by the Albanian authorities against Mr X... ;

Notes that the judicial supervision is terminated ;

Orders the printing of this ruling, its transcription on the registry of the investigating chamber of the cour d'appel (*Court of Appeal*) of Chambéry and its mention in the margin or following the ruling set aside.

President : Mr Soulard

Reporting Judge : Mr Guéry

Advocate-General : Ms Mathieu

Lawyer(s) : SCP Waquet, Farge et Hazan

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