

APPLICATION N° 24015/94

E G M v/LUXEMBOURG

DECISION of 20 May 1994 on the admissibility of the application

Article 3 of the Convention *The extradition of a person to a country where there are serious reasons to believe that he will be subjected to treatment contrary to Article 3 may raise an issue under this provision. This is not the case when the individual's allegations are not supported by any persuasive prima facie evidence.*

Article 6, paragraph 1 of the Convention *This provision does not apply to a court's examination of an extradition request from a foreign State.*

Competence *ratione materiae*

- a) *Neither the Convention nor Article 4 of Protocol No. 7 guarantees respect for the principle ne bis in idem in respect of convictions in different States.*
 - b) *Extradition is not, as such, among the matters covered by the Convention.*
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THE FACTS

The applicant, who is of Colombian nationality, was born in 1946 and was detained in Schrassig prison (Luxembourg) when the application was introduced.

In the proceedings before the Commission, he is represented by Mr Pascal Vanderveeren, a lawyer practising in Brussels.

The facts of the case, as submitted by the applicant, may be summarised as follows

In October 1989, following the entry into force of the Luxembourg legislation on money laundering, the applicant and J and M became the subject of police investigations

In a judgment of 2 April 1992, the Luxembourg District Court convicted the applicant of offences under the legislation on money-laundering and sentenced him to five years' imprisonment and a fine of 10 million Luxembourg francs. In the same judgment, the co-defendant J was sentenced to 54 months' imprisonment and a fine of 5 million Luxembourg francs. The third co-defendant was acquitted

On 5 May 1992, the applicant appealed against the judgment

In a judgment of 22 January 1993, the Grand Duchy of Luxembourg Court of Appeal confirmed the sentences handed down in the contested judgment while amending the wording of the charges against the applicant and J as follows

"during the period from 23 July 1989 to 29 June 1990 in Luxembourg and based in Luxembourg,

in contravention of the Act of 7 July 1989 amending the Act of 19 February 1973 concerning the sale of medicines and the fight against drug addiction,

knowingly helped to falsify the origin of the income of a person committing offences referred to in Section 8, paragraphs (a) and (b),

in this case, devising and implementing an operation to launder 36 million United States dollars originating from the cocaine traffic, placed in 135 accounts in 68 European banks on behalf of Jose Santacruz Londono '

The applicant did not appeal against this judgment on points of law

On 2 April 1992, the United States authorities had requested the authorities of the Grand Duchy of Luxembourg to extradite the applicant for organising cocaine trafficking and money laundering between 1979 and 1990

On 10 April 1992, the Luxembourg District Court in chambers had issued an order making an arrest warrant issued on 24 October 1990 by the Chief United States Magistrate of the United States District Court for the Eastern District of New York enforceable throughout the Grand Duchy of Luxembourg

On 23 April 1993, the Court of Appeal approved the extradition request, subject to the condition that the applicant could not be prosecuted or tried in the United States for those offences in the extradition request for which he had been prosecuted and tried in the Grand Duchy of Luxembourg.

On 16 July 1993, the applicant appealed against this decision on points of law

In a judgment of 24 February 1994, the Court of Cassation declared the appeal inadmissible on the following grounds

"Appeals on points of law are only possible against judgments delivered at final instance, against judgments and decisions relating to jurisdiction and against final decisions on the right to institute civil proceedings, the decision against which the appeal is lodged does not come into any of the above categories, according to Section 2 of the Extradition Act of 13 March 1870, the Court of Appeal in chambers is only required to give an opinion on requests to extradite foreign nationals, this involves a simple assessment for the purposes of informing the executive, it therefore follows that the appeal is inadmissible "

The applicant was extradited to the United States on 15 May 1994

COMPLAINTS

1 a) The applicant complains that he did not receive a fair trial. He claims that the Luxembourg courts were neither impartial nor independent and infringed the rights of the defence. The proceedings against the applicant were based exclusively on the need to protect and enhance Luxembourg's interests as a financial centre. The applicant alleges a violation of Article 6 of the Convention.

b) The applicant also complains that, as a Colombian national, he was the victim of discrimination within the meaning of Article 14 of the Convention, by reason of the judicial authorities' refusal to admit evidence or information from Colombia.

c) Relying on Article 7 of the Convention, the applicant complains about the retroactive application of the money-laundering legislation, which came into force on 7 July 1989, to offences committed before that date.

2 The applicant also complains of a violation of the *ne bis in idem* principle. He argues that the request for extradition to the United States was based on the same charges as those on which he had already been tried in Luxembourg. He also complains that the rights of the defence were infringed during the extradition proceedings.

3 Finally, the applicant claims that his extradition is contrary to Article 3 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 25 April 1994 and registered on 29 April 1994.

On 25 April 1994, the applicant asked the Commission to suspend, on an interim basis, in accordance with Rule 36 of the Rules of Procedure, the extradition order to which he was liable and which he considered to be contrary to Article 3 of the Convention.

In a decision of 28 April 1994, the President of the Commission decided not to apply Rule 36 of the Rules of Procedure.

THE LAW

1 The applicant complains that he did not receive a fair trial, that the criminal law was applied retroactively and that he suffered discrimination on account of his nationality. In this context, he relies on Articles 6, 7 and 14 of the Convention.

However, the Commission is not required to decide whether the facts alleged by the applicant disclose any appearance of a violation of these provisions. According to Article 26 of the Convention, the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law.

In this case, the applicant failed to appeal to the Court of Cassation concerning the alleged violations of the Convention and has not therefore exhausted the remedies available to him under Luxembourg law. Moreover, an examination of the case has not revealed any particular circumstance which could have exempted the applicant according to the generally recognised rules of international law in this area, from exhausting the domestic remedies.

It follows that the applicant has not satisfied the condition that the domestic remedies must be exhausted and that this part of the application must be rejected, pursuant to Article 27 para. 3 of the Convention.

2 The applicant also complains of a violation of the *ne bis in idem* principle, on account of his extradition to the United States, and of failure to respect the rights of the defence during the extradition proceedings

The Commission recalls that, in the context of criminal proceedings in different States, respect for the *ne bis in idem* principle is not guaranteed by the Convention (see No 8945/80, Dec 13 12 83, D R 39 p 43), or by Article 4 of Protocol No 7

Similarly, the rights and freedoms recognised in the Convention and its Protocols do not include any right not to be extradited (No 12543/86, Dec 2 12 86, D R 51 p 272)

With regard to the extradition proceedings, the Commission refers to its established case-law whereby the words "determination of a criminal charge" in Article 6 para 1 of the Convention relate to the full process of the examination of an individual's guilt or innocence of an offence, and not merely to the process of determining whether or not a person may be extradited to another country (see No 10227/82, Dec 15 12 83, D R 37 p 93, and No 10479/83, Dec 12 3 84, D R 37 p 158)

The Commission notes that in this case the Luxembourg authorities were simply required to decide whether the formal conditions for extradition were satisfied

It therefore considers that the extradition proceedings did not entail a decision on the merits of a criminal charge against the applicant within the meaning of Article 6 para 1 of the Convention

It follows that this part of the application must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 27 para 2 of the Convention

3 Finally, the applicant complains that his extradition to the United States is contrary to Article 3 of the Convention

Article 3 of the Convention reads as follows

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment "

The Commission recalls that, according to the case-law of the Convention organs, expulsion or extradition of an individual may in exceptional circumstances be contrary to the Convention and, in particular, Article 3 thereof, where there are serious reasons to believe that he will be subject to treatment prohibited by that Article, in the country to which he is to be sent (see, for example, No 6315/73, Dec 30 9 74, D R 1 p 73, No 7011/75, Dec 3 10 75, D R 4 p 215, No 12122/86, Dec 16 10 86, D R 50 p 268, Eur Court H R , Cruz Varas and Others judgment of 20 March 1991, Series A no 201, p 28, paras 69-70) The Commission also recalls that anyone who claims to

face a serious risk of treatment contrary to Article 3 of the Convention if he is sent to a particular country must support his allegations with *prima facie* evidence (No. 12102/86, Dec 9 5 86, D R. 47 p 286) In this case, the applicant has adduced no evidence such as to support his allegations

It follows that the remainder of the application is manifestly ill founded and must be rejected, pursuant to Article 27 para 2 of the Convention

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE