

APPLICATION N° 28780/95

Illich SÁNCHEZ RAMIREZ v/FRANCE

DECISION of 24 June 1996 on the admissibility of the application

Article 1 of the Convention *Cooperation between the police of a High Contracting Party to the Convention and the police of a State not party to the Convention*
Examination of the facts whereby the applicant came under the jurisdiction of the High Contracting Party

Article 5, paragraph 1 of the Convention *Applicant allegedly deprived of liberty while abroad and handed over by the authorities of the foreign State to the French police. The fact that a warrant of arrest was not served on the applicant until he disembarked from a plane does not affect the legal basis of the prior deprivation of liberty which he claims to have suffered*

Article 5, paragraph 1 (c) of the Convention *Following cooperation between the police of a High Contracting Party to the Convention and the authorities of a State not party to the Convention, the deprivation of the applicant's liberty by the authorities of the High Contracting Party pursuant to a warrant served on the applicant immediately he arrived within the territory of this State is, on the facts, in conformity with this provision*

THE FACTS

The applicant, known as 'Carlos', was born in 1949 in Caracas (Venezuela) and describes himself as a revolutionary by profession. He is currently in prison in Fresnes.

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

The applicant submits that, following a surgical operation, he was staying in a villa in Khartoum (Sudan) under the protection of the Sudanese national security forces when, on the night of 14-15 August 1994, he was attacked by a dozen or so men, some of whom he recognised as members of his guard

He adds that he was handcuffed and fettered, that a military doctor gave him an injection and that he was then hooded. He was laid on the floor of a van and taken to the airport, where he says he saw, through the hood (which was very thin), two Frenchmen standing at the bottom of the steps up to an aeroplane. He was put onto the plane, which left immediately. He was then placed in a bag and strapped around his feet, knees and shoulders.

When he arrived at Villacoublay military airbase on 15 August 1994, at around 10 a.m., the applicant was taken into the charge of officers of the French Intelligence Service (Direction de la surveillance du territoire, hereinafter the D S T). He claims that he was then thrown onto the floor in the back of an estate type vehicle, covered with a blanket and sat upon by two men.

On arrival at the D S T premises an arrest warrant was served on him. The warrant had been issued on 7 June 1994 by the judge investigating a car bomb explosion in Paris on 22 April 1982 which had killed one person and wounded seventy others.

On 16 August 1994 the applicant was brought before the investigating judge.

He was charged with being an accessory to causing criminal damage to real and personal property by means of an explosive or incendiary device, thereby killing one person and permanently maiming others, and also with murder and grievous bodily harm.

He had in fact been convicted *in absentia* by Paris Assize Court on 1 June 1992 on several counts of murder and one of attempted murder and sentenced to life imprisonment.

On 5 September 1994, the applicant filed a *certiorari* application with the Indictments Division of Paris Court of Appeal. He alleged that, while he was staying lawfully in Khartoum, Sudanese police officers had seized, bound, drugged and hooded him and handed him over to French police officers, who had put him, by force, into a French military plane bound for Villacoublay military base and that as soon as he arrived there, French police officers had served him with the arrest warrant issued by the investigating judge. On this point, he submitted that, since he was seized abroad, the French judicial authorities should have issued an international arrest warrant.

He also argued that the extradition procedure laid down by the Law of 10 March 1927 had not been followed, although he had allegedly been expelled from Sudan at the request of the French Interior Ministry. Therefore, he claimed to have been wrongfully extradited, since the unlawfulness of the request for him to be handed over had rendered his arrest void pursuant to section 23 of the Law of 10 March 1927.

Lastly, he alleged that there had been a violation of Article 5 para 1 of the Convention in that he had been deprived of his liberty following an unlawful arrest.

In its judgment of 7 November 1994, the Indictments Division held as follows:

"In the light of the strong grounds for suspecting Illich Sánchez Ramirez, the investigating judge delivered a warrant of arrest against the [said Sánchez], who was on the run, on 7 June 1994. This warrant was effective only within French territory, pursuant to the provisions of section 131 of the Code of Criminal Procedure

The said warrant was duly served on the applicant on the day of his arrest on national territory, at Villacoublay, in accordance with the provisions of the Code of Criminal Procedure

The procedural validity of Illich Sánchez Ramirez's arrest in France is unquestionable

The fact that no international arrest warrant was issued is linked to the fact that there were no extradition proceedings, and these two issues will be examined together

From the case-file, it appears that, on 15 August 1994, at 10 15 a.m., Mr. Pouessel, acting Chief Superintendent at the D.S.T., was informed by his superiors that a person who might be Illich Sánchez Ramirez, *alias* Carlos, born in 1949 in Caracas (Venezuela) had arrived in Villacoublay from Sudan. Mr. Pouessel immediately went to Villacoublay and took the applicant into his custody

In the absence of any other details on the case-file, this court can find only that the circumstances in which Illich Sánchez Ramirez was put on a French plane are, at present, unknown

It appears, in any event, that the applicant was indeed deported to France without any judicial extradition proceedings and without an international arrest warrant having been issued against him

The applicant maintains that his deportation was illegal and that, consequently, his arrest within French territory was void.

The court notes that there is no extradition treaty between France and Sudan and that the French authorities made no request for the applicant to be detained pending extradition or extradited.

Any decision taken by the Sudanese authorities alone to refuse a residence permit to, or to expel or deport, an individual who may or may not have been an illegal or undesirable alien falls within the sovereign powers of that State; and, in the absence of any treaty, the use of extradition falls within a State's sovereign discretion.

In the instant case, the applicant cannot argue that there has been any violation of a provision of the Law of 10 March 1927 since no extradition proceedings were taken against him, and the offences with which he was charged were not amongst those incapable of founding a request for extradition under that Law.

Therefore, it has not been established that the applicant was handed over by Sudan in breach of the provisions of a treaty, nor that he was the subject of a disguised extradition.

Furthermore, the ability to take criminal proceedings against, and apply the criminal law in France to, someone who has fled abroad is not dependent on that person returning voluntarily to France or on extradition proceedings being taken.

An individual has no grounds on which to bring an action before the French courts challenging his expulsion or deportation by a foreign government acting in its sovereign capacity.

Moreover, case-law also provides that the circumstances in which someone, against whom proceedings are lawfully being taken and against whom a valid arrest warrant has been issued, has been apprehended and handed over to the French legal authorities are not in themselves sufficient to render the proceedings void, provided that they have not vitiated the search for and process of establishing the truth, nor made it impossible for the defence to exercise its rights before the investigating authorities and the trial courts.

On the facts, the deportation of Illich Sánchez Ramirez from Sudan, assuming that this is what happened, constituted a sovereign act on the part of the Sudanese Government which is outside the jurisdiction of the French courts, save for the purposes of punishing acts constituting criminal offences which have been brought to the knowledge of those courts and which have been committed by French citizens.

Lastly, since there were no extradition proceedings, the ability to execute a duly-issued warrant of arrest within national territory was not conditional on the voluntary return of Illich Sánchez Ramirez."

Regarding the alleged violation of Article 5, the court held as follows

Illich Sanchez Ramirez was arrested and detained for the purposes of bringing him before the court on suspicion of using explosives and thereby causing death and permanent injury and disability

Further, as set out above, the circumstances under which he was arrested do not render his detention void

Accordingly, the applicant's application was dismissed

On 21 February 1995, the Court of Cassation ruled on the applicant's appeal against that judgment

The applicant had alleged, *inter alia*, that there had been a violation of Article 5 of the Convention on the grounds that, "the court could not pretend to believe that an acting Chief Superintendent of the D S T had learned, at the very last moment, from his superiors' that the appellant was at Villacoublay, where he could be apprehended, without dealing with the appellant's submissions (which, for good reason, have not been disputed) that he was not arrested at Villacoublay, but in Khartoum, that despite the absence of any international arrest warrant, he was handed over, on Sudanese territory, by the Sudanese police to French police officers flown over specially for that purpose by French military aeroplane, and that the appellant, while still under arrest, was put onto the aeroplane and taken, under guard, to Villacoublay military airbase where an arrest warrant valid within French territory was served on him. Thus, the court avoided ruling on the lawfulness of the appellant's being held under arrest by representatives of the French State from Khartoum to Villacoublay. Yet this was precisely the ground on which it had been argued that Sánchez Ramirez's detention was arbitrary. Hence the court below failed to give reasons for its decision and violated section 593 of the Code of Criminal Procedure"

The applicant also complained that he had been extradited but that the Indictments Division had refused to recognise this fact

He also argued that, it has already been established that the appellant was arrested in Khartoum during the first fortnight in August 1994 and that he has been and (is still being) continuously detained since that time, and that on 15 August 1994, at Khartoum airport, he was transferred from the custody of the Sudanese police to that of French police officers, to whom he was handed over to be taken, under escort, by military plane to Villacoublay base. In the absence of an international arrest warrant, there was, therefore, at the time and place of his being handed over to the French authorities, no lawful authority for his arrest and detention'

As regards Article 5 of the Convention, he submitted that, it appears from paragraph 1 that the exceptions to the right to liberty can be permitted only in various cases of arrest or detention duly effected 'in accordance with a procedure prescribed by

law. These provisions, which were violated by the judgment under appeal, placed the Indictments Division under an obligation to find the appellant's detention by representatives of the French authorities wrongful from the time when he was put onto a military plane in Khartoum until he was taken off that plane at Villacoublay, where the warrant for his arrest within French territory was served on him.

The Court of Cassation, after summarising the Indictments Division's findings of fact and reasoning, held as follows:

In so holding, the court [below] gave legal grounds for its decision and did not commit the errors alleged by the appellant in his grounds of appeal.

It was correct in stating that the ability to take criminal proceedings against, and apply the criminal law to, a person who has fled abroad is in no way dependent on that person returning voluntarily to France or on extradition proceedings being taken. Where there is no treaty, it is enough if the offences with which he is charged are capable of founding a request for extradition under the Law of 10 March 1927.

Moreover, the national courts have no jurisdiction to examine the circumstances in which a person is arrested abroad by the local authorities, acting alone and in the exercise of their sovereign powers, and handed over to French police officers.

Accordingly, the Court of Cassation dismissed the applicant's appeal.

COMPLAINTS

1. The applicant claims, first, that there has been a violation of Article 3 of the Convention.

2. Secondly, he complains that there has been a violation of Article 5 para. 1 of the Convention, submitting that the French State had not taken extradition proceedings and that the judge had issued only a national arrest warrant whose effects were confined to French territory.

THE LAW

1. The applicant complains, first, that there has been a violation of Article 3 of the Convention, which reads as follows:

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

The Commission notes, at the outset, that the applicant's complaint is not supported by any evidence on the case-file. It further notes that the applicant took no steps to raise this allegation before the national courts.

It follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 27 para 2 of the Convention

2 Secondly, the applicant complains that there has been a violation of Article 5 para 1 of the Convention, which states as follows:

"1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a. the lawful detention of a person after conviction by a competent court;
- b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so,
- d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority,
- e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition "

The Commission recalls, first of all, that in so far as the application concerns the circumstances in which the applicant was allegedly deprived of his liberty in Sudan, it is outwith the jurisdiction of the Commission, *ratione personae*, since the European Convention on Human Rights does not bind that State, and would, therefore, have to be rejected as being incompatible with the provisions of the Convention

However, the applicant is essentially complaining about the deprivation of his liberty by the French authorities.

According to the applicant, he was taken into the custody of French police officers and deprived of his liberty in a French military aeroplane. If this was indeed the case, from the time of being handed over to those officers, the applicant was effectively under the authority, and therefore the jurisdiction, of France, even if this

authority was, in the circumstances, being exercised abroad (see the decisions on the admissibility of Applications Nos 6780/74 and 6950/75, *Cyprus v Turkey* D R 2 p 125 No 8916/80, *Freda v Italy*, Dec 7 10 80, D R 21 p 250 and No 14009/88, *Reinette v France* Dec 2 10 89, D R 63 p 189)

As regards the lawfulness of the deprivation of the applicant's liberty, it has been established that an arrest warrant was issued against him by the investigating judge on 7 June 1994. This warrant was issued because the applicant, who was on the run, was suspected of involvement in preparing and executing a terrorist attack which took place in Paris on 22 April 1982. The applicant was therefore deprived of his liberty in the circumstances described in Article 5 para 1 (c) of the Convention.

The arrest warrant was executed by French police officers, in accordance with French law - as has, moreover, been established by the domestic courts which dealt with the case.

It does not appear to the Commission that any cooperation which occurred in this case between the Sudanese and French authorities involved any factor which could raise problems from the point of view of Article 5 of the Convention, particularly in the field of the fight against terrorism, which frequently necessitates cooperation between States.

In particular, the Commission finds that the fact that the arrest warrant was not served on the applicant until he left the aeroplane does not mean that the alleged prior deprivation of his liberty had no legal basis in French law (see No 8916/80 *supra*).

To the extent that the applicant complains about the fact that France did not bring extradition proceedings, the Commission recalls that, in any event the Convention contains no provisions either concerning the circumstances in which extradition may be granted, or the procedure to be followed before extradition may be granted. It follows that even assuming that the circumstances in which the applicant arrived in France could be described as a disguised extradition, this could not, as such, constitute a breach of the Convention.

The Commission therefore considers that the facts of the case, as submitted to it, do not disclose any violation of Article 3 or 5 of the Convention and that the application must be rejected as manifestly ill-founded pursuant to Article 27 para 2 of the Convention.

For these reasons the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE