

Process: 127/21.5YRCBR.S1
Conventional No.: 5th SECTION
Reporter: GENERAL CID
Descriptors: EXTRADITION
PROVISION OF GUARANTEES BY THE APPLICANT STATE
LIFE
PRINCIPLE OF SPECIALTY
PRINCIPLE OF EQUALITY
IN DUBIO PRO REO
REJECT
Agreement Date: 02/24/2022
Voting: UNANIMITY
Full Text: s
Privacy: 1
Procedural Means: EXTRADITION / EAW
Decision: PROVISION DENIED.
Summary :

I - Pursuant to art. a) of art. 3 of the Convention on Diplomatic Relations, signed in Vienna on 18 April 1961, to which Portugal and the People's Republic of China are parties, the functions of diplomatic missions consist, in particular, of “ *representing the sending State before the sending State* ”. ”, which is why any guarantees provided by the embassy of that country necessarily bind the Chinese State.

However, as a result of such binding of an instrument of international law, it did not need to be expressly invoked in the notes produced by the Embassy of the People's Republic of China.

II - There are also no doubts as to the validity of the guarantee provided by the Chinese State that the appellant will not be sentenced to life imprisonment.

In fact, as can be seen from the Verbal Notes of 16 and 22 June 2021, the Government of the People's Republic of China guarantees, pursuant to article 50 of the domestic law on extradition of the People's Republic of China, based on a decision of the Supreme People's Court of the People's Republic of China that, in the event that the appellant is extradited from Portugal to China and convicted by a Chinese court for the facts for which extradition was requested, the Trial Court will not sentence her to life imprisonment.

III - Since there is no reason to question the validity of the guarantee of non-application of life imprisonment to the appellant, provided through a verbal note from the Embassy of the People's Republic of China, there is also no doubt that it is binding on the Chinese State. We are dealing with a formal declaration, the content of which must be assumed to be true and which, for all purposes, corresponds to a solemn commitment that the Chinese State assumes vis-à-vis the Portuguese State, a commitment that, in terms of the elements transmitted, is in formal and substantial requirements to fulfill, and it is enough, as it was, for the Assistant Secretary of State and Justice to consider the appellant's extradition admissible.

IV - Regarding the possibility that the appellant may be sentenced to imprisonment of indefinite duration, we will say that, although it is certain that art. 192.º of the Penal Code of the People's Republic of China does not provide in its body a maximum limit for the duration of

the prison sentence other than life imprisonment, establishing only the minimum limit of ten years in prison, that first limit has to go search for art. 45 of the same legal diploma, which provides that, “*unless articles 50 and 69 of the present Law establish otherwise, the term of a fixed-term prison sentence cannot be less than six months and no longer of fifteen years*”, meaning that the appellant, if convicted of the facts on which the extradition request is based, will incur a prison sentence of between a minimum of ten years and a maximum of fifteen years.

Whilst it is true that the guarantee provided by the Chinese State does not mention the maximum limit of fifteen years for the prison sentence for which the applicant may be sentenced, it is equally true that it did not have to mention it, since such a limit does not result in of a condition accepted by the Chinese State, but of its own criminal law.

V - In short, the Chinese State has provided a valid and unconditional guarantee that the appellant will not be « *charged with one or more crimes, of a different nature, and with more serious penal frameworks, not included in the request and which legitimize the extradition*» and that the same will not be sentenced to life imprisonment, resulting from the combination of art. 192 and 45 of the Penal Code of the People's Republic of China that, if convicted for the facts that gave rise to the extradition request, will incur a prison sentence whose maximum limit may not exceed fifteen years.

VI - The instability/family rupture caused by the appellant's Extradition to China does not constitute sufficient reason for refusing extradition under the terms of article 6, al. f) of the LCJ and/or article 4, al. b), of the Treaty, insofar as the circumstance that motivates the family breakup was created by the Extradited Party (suspected of committing crimes in China, where she is a national) and is solely attributable to her. If we understand that the constitution and/or increase of the family in Portugal, is a reason for refusal of Extradition, conditions would be created for the impunity of those who knowingly committed crimes (*eg in the country of which they are nationals*) and if they wanted to evade the action of justice.

VII - The interference in the applicant's right to family life caused by the Extradition authorization appears to be justified and is not manifestly arbitrary or disproportionate, and, to that extent, does not violate any constitutional precept and/or article 8 of the ECHR , there being no strong grounds for optional refusal under the terms of article 18, no. 2 of the LCJ and article 4, al. b) of the Treaty.

VIII - Regarding the violation of the principle of equality provided for in art. 13 of the CRP, for non-application of art. 135.º, no. 1 of Law no. 23/2007, of 4 July (Entry, Stay, Departure and Removal of Foreigners from the National Territory), we will say, from now on, that invoking the provisions of the art. 135.º of Law 23/2007, of July 4th, since this rule only applies in relation to the expulsion from the national territory of those who find themselves in one of the situations provided for by art. 134 of the same statute, which is clearly not the case with the applicant. In fact, the purposes and purposes of the extradition process

are different from the expulsion decision and, to that extent, the regime of article 135, paragraph 1 of Law no. , of 04.07

IX - Concluding that the purposes/purposes/interests are different in both processes (expulsion and extradition), it is not necessary to consider the issue of violation of the principle of equality raised by the appellant, insofar as the arguments of the appellant that he was faced with two equal situations with unequal treatment. *X - In the present case, the alleged violation of the principle in dubio pro reo* makes no sense ,since the contested decision authorized the appellant's extradition to the People's Republic of China for the purposes of criminal proceedings for the crime of "fraudulent obtaining of funds", provided for and punishable by Article 192 of the Criminal Law of the People's Republic of China , duly substantiating the decision on the matter of fact, which shows an appreciation and valuation of the evidence made in a rational, logical, plausible way and in harmony with the rules of common experience, so, in no way, it can be concluded that that same evidence generates uncertain facts, or that the court was faced with some state of reasonable doubt about the factual evidence, capable of overturning the assessment made when the appellant was authorized for the People's Republic of China.

Full Text Decision:

Case No. 127/21.5YRCBR

Extradition

Agree, in conference, in the Supreme Court of Justice:

I. Report

1. The Public Prosecutor's Office at the Court of Appeal ... promoted, under the terms of article 50, no. 2, of Law no. 144/99, of 31 August, the fulfillment of the extradition request Chinese citizen AA - married, born on .../.../1978, in the province of ..., holder of Chinese passport No. ..., issued on ... on March 21, 2017, valid until March 21, 2027, residing at Rua ... (currently at Quinta..., ...) in ..., Portugal, filed by the People's Republic of China for the purposes of criminal proceedings relating to the alleged practice of a crime of obtaining funds by fraudulent means, practiced from October 2013 to August 2018, punishable by article 192 of the Criminal Law of the People's Republic of China with life imprisonment.

The Public Prosecutor's Office invokes that the extradited person is wanted by the judicial authorities of the People's Republic of China - People's Attorney..., for having publicly promoted, as legal representative of the company S..., private equity financial products to people, over the phone and out loud, in collusion with others, using as a lure a high yield of 7.5% to 16%, thus having managed to illegally receive 2.098 billion CNY from a group of unspecified people, but more than 414, which he used to the purchase of real estate and for personal consumption, causing the non-payment of 612 million CNY,

which at the current exchange rate is equivalent to the amount of around 79 million euros.

The defendant was arrested in the city of ... on 19.4.2021, heard at the Court of Appeal on 20.4.2021, within the scope of the detention validation process no. the arrest was confirmed, which was later replaced by the coercive measures of periodic presentations and the ban on going abroad.

*

2. After the injunction was issued, the extradited person was heard, under the terms provided for in article 54 of the aforementioned Law No. 144/99, and she expressed her opposition to the extradition request made by the People's Republic from China, and not having renounced the principle of specialty.

The coercive measure of periodic presentations was applied to him.

Notified under the terms and for the purposes of the provisions of article 55 of the aforementioned legal diploma, the defendant came to oppose the extradition request, invoking, for that purpose, reasons that she set out as follows:

- a) Nullity of the records due to the absence of the Order of Mr. State Secretary;
- b) Invalidity of the guarantee presented by the Chinese Embassy because Note n° 27 is not complete;
- c) Insufficiency of the Guarantee as it does not include the decision taken by the Supreme People's Court;
- d) Insufficiency and lack of clarity in the binding of the Ministry of Foreign Affairs;
- e) Insufficiency and lack of clarity in the text of the “Guarantee”, raising doubts as to whether the guarantee was effectively provided;
- f) Humanitarian reasons related to the situation of the Extradited and her Family; and
- g) Factual errors in the matter on which the extradition request is based.

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3. The defendant added documentary evidence and requested the questioning of witnesses.

The witnesses were questioned.

In the final arguments they presented, the Public Ministry and the extradited person reaffirmed the positions previously taken.

Once the legal visas were obtained, the proceedings were taken to the conference and after, on January 19, 2022, the judgment of the Court of

Appeal..., which decided to authorize the extradition of AA to the People's Republic of China for the purposes of criminal proceedings for the crime of “procuring funds by fraudulent means”, provided for and punishable by Article 192 of the Criminal Law of the People's Republic of China.

*

It is from this judgment that the defendant AA, appeals to this Supreme Court of Justice, concluding its reasoning in the following terms:

A. The present appeal is filed against the judgment handed down by the Honorable Judges of the 5th Criminal Section of the Court of Appeal ..., on January 19, 2022, pursuant to which the Appellant's extradition to the People's Republic was determined from China.

B. The present case is characterized by specific circumstances that distinguish it from others, which can never be ignored (as appears to have been the case by the Court a quo): it is a request for the extradition of a wife and mother, on whom the 4 members of her household, namely her sick and dependent husband and her two babies born in Portugal.

C. Personal and family circumstances disregarded by the court appealed against which could, under the terms of the various applicable laws, constitute grounds for refusing extradition.

D. And at the same time, a woman who was not subject to any judgment or sentence, so for all intents and purposes, and in accordance with our Constitution, presumed innocent, in respect of the principle of in dubio pro reo, enshrined in article 32 of the Constitution of the Portuguese Republic.

E. The learned judgment under appeal, which suffers from errors in the judgment of law and its consequent revocation, proves to be manifestly necessary for the appreciation of an issue of fundamental importance, both for its legal relevance and clearly and necessarily for a better application of the law .

F. In deciding otherwise, the learned judgment under appeal made an error in the interpretation and application of Article 6, al. A) and f) and 18° n° 2 of Law n° 144/99 of 31 August, article 4, al. b) of the Treaty between the Portuguese Republic and the People's Republic of China on Extradition, of Article 8 of the European Convention on Human Rights (ECHR), Article 135(1) of Law No. 23/2007, of 4th of July and articles 1, 13 n° 1, 32 n° 2 and 33 n° 4, 67 to 70 of the Constitution of the Portuguese Republic.

G. Because, we understand that the interpretation of the aforementioned rules could only lead to another decision-making outcome – that of non-authorization of extradition.

H. The extradition request expressly states that the request of the requesting State is aimed at pursuing the criminal action against the Appellant for the practice of the crime of obtaining funds through fraudulent means, practiced from October 2013 to August 2018, punishable by art. 192 of the Criminal Law of the People's Republic of China with a life sentence.

I. If subject to trial, it will be possible that the Appellant will be charged with one or more crimes, of a different nature, and with more serious penal frameworks, not included in the request and which legitimize the extradition. Consequence not admissible in the light of our legal system.

J. We cannot share the confidence of the Court a quo to legitimize the application of the provisions of article 6 with the guarantees provided by the diplomatic representation of the People's Republic of China.

K. Also because some verbal notes that are an integral part of the case file, n.º 27, has no formal validity, since it does not have the diplomatic protocol formula.

L. Which raises serious doubts as to the subscription, respect and, above all, its binding on the part of the People's Republic of China to the content that they emanate.

M. There is a clear duty of care, since if the non-compliance with the established rules is manifested from the outset with verbal notes, how will it be possible for Portugal to impose respect and regular compliance with the guarantees now provided?

N. Contrary to the Judgment, there is no serious and valid guarantee that the People's Republic of China will comply with a penalty, to be applied, of up to 15 years.

O. The crime imputed to the Appellant may, eventually, be punished with life imprisonment, a consequence that cannot be completely ruled out, as there are unknown circumstances/elements, namely companies of a public or private nature, among others, may lead to application of a different and more severe penalty of the guarantees now provided.

P. It is not proven, because the trial has not yet begun, there being only one accusation, to what title the facts are attributed to the Appellant - if as the author, if as an accomplice and if she would be a mere employee.

Q. The Chinese authorities, instead of listing all the rules abstractly applicable to the case, chose Article 192 of the Criminal Law of the People's Republic of China, whose penal framework includes abstractly applicable life imprisonment,

R. This despite, according to note n.º 24 and also in the information provided by the Ministry of Foreign Affairs, they consider that a sentence of more than 15 years will not be imposed,

S. However, it is the Appellant's strong conviction that this communication only aims to integrate the conditions for the admissibility of Extradition so that later, once the applicant is extradited, her track and compliance with this penal framework will be lost.

T. Thus, they did not take care to list all the more serious rules and facts, once in trial, that can be applied in the abstract to the case and therefore, by aggravating the measure of the penalty, they would prevent Extradition.

U. In this sense, the violation of Human Rights, and the real possibility of being sentenced to life imprisonment by virtue of the weak guarantees provided by the Requesting State, must prove to be sufficient to fulfill the cause of refusal of extradition provided for in art. 6 of Law no. 144/99, of 31 August, which did not happen here.

V. Also in this sense, and under the Treaty between the Portuguese Republic and the People's Republic of China on Extradition, signed on 31 January 2007, the authorization of extradition, pure and simple, should have been rejected, in accordance with the in article 3, which results in the refusal of extradition as an imperative.

W. The granting of extradition without the presentation of a guarantee is, in addition, an illegality, which was expressly invoked, and was not complied with, but not only, it substantiates the practice of an Unconstitutionality for violation of article 33(4) of the CRP, which makes the granting of extradition subject to the presentation of a guarantee by the requesting state on the non-application of a life sentence or imprisonment of indefinite duration,

X. This guarantee was not valid and/or legally provided in the extradition records, due to insufficient motivation.

Y. Therefore, the submission of the facts to the law should be another, and hence the court a quo makes a wrong and incorrect interpretation of the rules listed here, which should have resulted in a diametrically different interpretation, as has been abundantly discussed above, violating roughly the provisions of article 6, al. a) and f) of Law n.º 144/99 and in article 33.º n.º 4 CRP.

Z. Contextualizing, also in the present case and object of this appeal, this principle of mutual trust does not exist because there is no solid and valid guarantee provided by the People's Republic of China, there is only a formalism in which the application of a prison sentence of 10 /15 years. Without knowing all the facts that may produce changes in the application of the sentence, making it possible to apply the sentence of life imprisonment - Principle that violates the constitutional norms already identified as well as Law 144/99 and the aforementioned Treaty signed and which governs the present situation.

AA. The Court misinterpreted the provisions of article 4, al. b), of the Treaty on Extradition signed between the two Countries, of article 8 of the ECHR, article 13 of the CRP and article 18, paragraph 2 of Law n.º 144 /99 of 31 August.

BB Since, for the Court a quo, compliance or not with the safeguarding of human rights is assessed solely and exclusively by the existence of national and international instruments approved by China or to which China is a party, leading to an automatic application and authorization of extradition.

CC The circumstances surrounding the Appellant's extradition cannot in any way be disregarded. The Appellant's extradition would indeed amount to the breaking of the family bond and the necessary reception of the children in an institution. So, let's see:

DD The applicant has resided in Portugal since August 2018 with her husband, BB, and is fully integrated into our country, from a social and family point of view.

AND IS. The Appellant, as proved, is a wife and mother, on whom her seriously ill husband, with a degenerative pathology, and their 3 children, 2 twins aged 3 years and their eldest son with a fragile 14 years of age, with all the responsibilities that come with it.

FF Contrary to the learned interpretation of the Court a quo, the Appellant's extradition implies the exposure of this family to an absolutely vulnerable and risky situation, violating in all its fullness the right to private and family life, and the provisions of article 8. of the ECHR.

GG “Everyone has the right to an effective recourse to the competent national jurisdictions against acts that violate fundamental rights recognized by the Constitution or by law.”

HH Articles 67 (“Family”), 69 (“Childhood”) and 70 (“Youth”) enshrined in the Constitution of the Portuguese Republic (CRP) determine that the family “as a fundamental element of society” has the right to protection and “effectiveness”. of all the conditions that allow the personal fulfillment of its members”.

II. The extradition that is intended to be imposed on the Appellant by the Court a quo roughly contends with this principle, since the Appellant's uncertain and dramatic removal from her family, ruled by the serious uncertainty of her return, is in no way consistent with the principles set out in the cornerstones of our rule of law.

JJ Carrying out such extradition cannot in any way be understood as respecting the personal fulfillment of the members of the household, in the terms invoked by the Constitution.

KK “the mother was the one who performed the functions of caregiver and, given the absence of a maternal figure, due to the fact that she was

detained in the prison..., and given the difficulties of the parent in reconciling domestic routines with child care once Since these are two two-year-olds who require permanent adult attention, this EMAT has endeavored to integrate CC and DD children into school equipment.”

LL. If there were any doubts about the Appellant's fundamental role and pillar within her family, they are all dissolved with this social report prepared during her absence.

This circumstance alone made it necessary to hand over the minors to an institution.

MM Also the young son EE, a teenager, “the young man is well integrated, being a committed student with good academic performance and exemplary behavior with the entire educational community.” Fruit of the education he receives within his family, not only in the person of the Appellant, but considered as one and as a whole. This family/household, as proved again in the aforementioned social report, “has no family back-up”.

NN. Being as a whole a functional and balanced family, it cannot be understood in a different sense than the profound disturbance that extradition would bring to the bosom of that family that would become perfectly dysfunctional and unprotected in that same quality.

OO. The personal fulfillment of the members of this household would be completely destroyed, clearly and violently contradicting the provisions of the aforementioned articles of our Constitution, which, for that very reason, govern the situation under analysis.

PP As well as the guarantee to childhood and youth enshrined in articles 69 and 70, since children CC and DD and young EE would have their childhood and youth, constitutionally protected values, respectively, undeniably compromised.

QQ Never forgetting, nor being able in any way to disregard, what was proved by the Court to Quo, now Defendant, on the social and family conditions of the Appellant.

RR This circumstance cannot be analyzed in a favorable sense for those principles, but manifestly violators of it.

SS. Also in this sense, the conflicting interests here - the protection of the family and the interest of the State - need serious consideration since they should always be guided by consideration and reasonableness, proportionate to the purpose pursued, when what is at stake is interference in the private and family and private life of a citizen, in the circumstances already described.

The interpretation of the rules can never be done in order to automatically apply and authorize the extradition of a citizen in such a vulnerable and fragile family situation.

TT. As mentioned, and also underlined here, this case imperatively demands the application of the humanitarian clause provided for in article 4, al. b) of the Treaty between the Portuguese Republic and the People's Republic of China on Extradition and in article 18, no. 2 of Law no. 144/99 – which the Court a quo rejected.

UU. We have here the basic Principle of Human Dignity, provided for in article 1 of our Constitution, in its various aspects, which makes the need to apply the optional denial of international cooperation prevail, in this specific situation, and, as well as the non-authorization of extradition.

VV. In order to apply the humanitarian clause, the requested State must make a probability judgment on the seriousness of the consequences that may result from the request and the consequent authorization, namely from acts that occur in the personal sphere of the extradited person, even if they affect third parties.

WW It is different for the Appellant to claim that his extradition will conflict with the rights and legal sphere of any third party and to claim that it will violate the rights of his minor, dependent, and young children. And once again, two of them with Portuguese nationality and residing here.

XX. The Court a quo did not pay enough attention to the provisions of article 135.º, no. 1 of Law no. minor children of Portuguese nationality residing in Portugal.

YY. The possible unequal treatment of these figures constitutes a gross and flagrant violation of the Principle of Equality, provided for in article 13 of the CRP. The different treatment of the above cases would result in an irrational and perfect inconsistency since, in practice, it would translate, by way of example, in the non-expulsion from national territory of a citizen who has committed a serious crime and, in the completely opposite sense, but, once again, in the light of the protection of the same interests underlying the two procedures, in the extradition of a citizen who has committed a less serious crime in the State that requests the extradition.

ZZ. Having made a case-by-case analysis of the crime for which the Appellant's extradition is sought, it is concluded that it is an economic crime and not a crime within the concept of serious crime.

AAA. Thus, there is no doubt that the application of the extradition institute to the present case and its consequent authorization clearly violates the right to the family and the right of minors, to the protection of and in the family, enshrined in arts. 36, no. 6 and 67 to 70 of the CRP, the constitutional principles of Equality and Dignity - articles 1 and 13, which guide our Rule of Law as well as the protection conferred by article 135 no. 1 of Law no. 23/2007, of 4 July.

BBB. In casu, and taking into account the position of the Court of Appeal ..., in view of the lack of protection of the In Dubio Pro Reo Principle, since the Court of the Respondent State corroborates the disrespect for this sovereign principle.

CCC Since, by sufficient with the Diplomatic Notes of a sentence of imprisonment for up to 15 years, without the trial having even started, it is also open to presupposing his guilt.

Area code The in dubio pro reo is thus understood in the sense that it is an imposition addressed to the Court, imposing favorable treatment on the accused as long as the facts accused against him are not proven and the conviction becomes final. In the same way that, in case of doubt about the facts, the judge is bound by this same principle, having to always decide in favor of the accused, which did not happen here – let us see in this sense article 32 n° 2 of the Portuguese Constitution.

EEE. Being also in this context, the judgment of the appealed learned Court wounded by legal and constitutional substance, manifesting itself in violation of the most basic guiding principles of our Rule of Law, due to its misinterpretation of the aforementioned norms.

FFF Therefore, the Appellant can only be considered not guilty by the Court A quo because in Portugal she has not been convicted or sentenced to imprisonment without prior judgment.

GGG. And in this sense, the requirements for Extradition are not met.

HHH. In deciding otherwise, the learned judgment under appeal made an error in the interpretation and application of art.

So in view of the above,

In these terms, Your Excellency is requested. that they deign to grant the present appeal and, consequently, order the revocation of the judgment of the Court of Appeal ..., thus rejecting the extradition of the Appellant to the People's Republic of China.

The Public Prosecutor's Office responded to the appeal, under the terms and on the following grounds:

1. The extradited person AA appealed to the STJ against the judgment of the Court of Appeal ..., of January 19, 2022, which, within the scope of an Extradition Request formulated by the Authorities of the RP of China, decreed the surrender of her national for the purposes of criminal proceedings for the crime of obtaining funds by fraudulent means, provided for and punished by article 192 of the Criminal Law of that country.

2. The appellant seeks the revocation of the aforementioned judgment, alleging, in summary, that:

2.1 Despite the fact that the request expressly states that extradition is only for the purpose of prosecuting the crime of obtaining funds through fraudulent means, "it is possible that the appellant will be charged with one or more crimes, of a different nature, and with more burdensome, not included in the request and that legitimize the extradition", since the verbal notes through which the authorities of the PR of China provided the necessary guarantees to the Portuguese State "have no formal validity, since they do not have the protocol formula attached diplomatic";

2.2 Despite the fact that the authorities of the PR of China have declared that she will not be sentenced to imprisonment for more than fifteen years, "the applicant is strongly convinced that this communication is only intended to integrate the conditions for the admissibility of extradition so that, later, once extradited the applicant loses track of her and her compliance with the criminal framework», stating that «the possibility of a life sentence being imposed is real because of the weak guarantees provided»;

2.3 Handing over the applicant to the Chinese PR Authorities would expose her family, made up of her husband and three minor children, to an "absolutely vulnerable and risky situation, which violates the full extent of the right to private and family life, and of the provisions of article 8 of the ECHR";

2.4 The principle of equality requires the extradited person to benefit from the ban on expulsion of foreign nationals who are responsible for minor children of Portuguese nationality residing in Portugal, provided for in article 135.1, al. c), of Law 23/2007, of 4 July;

3. It concludes its conclusions alleging that the learned judgment under appeal violated articles 6, al. a) and f), and 188.2 of Law 144/99, of August 31, article 4, al. b), of the Treaty between the Portuguese Republic and the People's Republic of China on Extradition, of 31 January 2007, article 8 of the European Convention on Human Rights, articles 1, 13, 15, 32, 33.4, and 67th to 70th of the CRP, and article 135th.1 of Law 23/2007, of July 4th.

4. It so happens that the appellant, before the STJ, does nothing but repeat the questions that it opportunely raised before the Court of Appeal ..., all of which were exhaustively and learnedly decided in the contested judgment, in which we review ourselves without reservation, which would exempt us from any further considerations.

Without prejudice, we will always say the following:

5. On the alleged lack of formal validity of the verbal notes, through which the authorities of the PR of China provided the necessary guarantees to the Portuguese State, for not having adopted the diplomatic protocol formula, even though, as is well pointed out in the learned judgment under appeal, the validity of a Verbal Note is not

dependent on the use of a protocol compliance formula, this formula was still used in Note No. So,

6. Contrary to what the applicant claims, none of the notes is incomplete, not suffering from any imperfection or defect, or, at least, imperfection or defect that call into question their content or validity. Now,

7. As there is no reason to question the validity of the guarantee of non-application of life imprisonment to the appellant, provided through a verbal note from the Embassy of the People's Republic of China, there is also no doubt that it is binding on the Chinese State. Indeed,

8. Pursuant to art. a) of art. 3 of the Convention on Diplomatic Relations, signed in Vienna on April 18, 1961, to which Portugal and the People's Republic of China are parties, the functions of diplomatic missions consist, in particular, of "representing the sending State before the sending State", reason why any guarantees provided by the embassy of that country necessarily bind the Chinese State. Now,

9. As a result of such binding of an instrument of international law, it also did not need to be expressly invoked in the notes produced by the Embassy of the People's Republic of China.

10. Nor are there any doubts as to the validity of the guarantee provided by the Chinese State that the appellant will not be sentenced to life imprisonment. Indeed,

11. As can be read in note 24, the Chinese State, represented by its diplomatic mission in Lisbon, declares that, "in accordance with article 50 of the Extradition Law of the People's Republic of China and the decision of the Supreme People's Court of the People's Republic of China, in the case of the FF's extradition from Portugal to China, if the FF is convicted by a Chinese court for the facts underlying the extradition request, the trial court will not impose a sentence above life imprisonment (including to life imprisonment) in accordance with the law" (cf. page 80, verso).

12. We are therefore dealing with a formal declaration, the content of which must be presumed to be true and which, for all intents and purposes, corresponds to a solemn commitment that the Chinese State assumes vis-à-vis the Portuguese State, a commitment which, in terms of the elements transmitted, is in formal and substantial conditions to comply, and it is enough, as it was, for the Assistant Secretary of State and Justice to consider the appellant's extradition admissible.

13. Regarding the possibility that the appellant may be sentenced to imprisonment of indefinite duration, we will say that, although it is true that article 192 of the Penal Code of the People's Republic of China does not provide in its body a maximum limit for the duration of a prison sentence other than life imprisonment, establishing only the minimum limit of ten years in prison, that first limit must be taken from

article 45 of the same legal diploma, which provides that, “unless articles 50 and 69 of the present Law establish otherwise, the term of a prison sentence with a fixed term cannot be less than six months and not more than fifteen years”, meaning that the appellant, to be sentenced for the facts that support the request for extradition, will incur a prison sentence of between a minimum of ten years and a maximum of fifteen years.

14. Incidentally, the Portuguese Penal Code itself contains a rule identical in content to the one mentioned above, namely article 41, which, strictly speaking, would exempt the rules relating to crimes punishable with prison sentences of up to twenty-five years of imprisonment contained an express indication of this limit, since it is already imperatively established by the aforementioned normative. So,

15. While it is true that the guarantee provided by the Chinese State does not mention the maximum limit of fifteen years for the prison sentence in which the appellant may be sentenced, it is equally certain that it did not have to mention it, since such limit does not result from a condition accepted by the Chinese State, but from its own criminal law.

16. In summary, the Chinese State has provided a valid and unconditional guarantee that the applicant will not be "indicted for one or more crimes, of a different nature, and with more serious penal frameworks, not included in the request and which legitimize the extradition" and that the same will not be sentenced to life imprisonment, as a result of the combination of articles 192 and 45 of the Penal Code of the People's Republic of China that, if convicted for the facts that gave rise to the extradition request, will incur a prison sentence whose limit maximum shall not exceed fifteen years.

17. There remains, therefore, the appellant's 'conviction' that the guarantee provided by the Chinese State 'is only intended to integrate the conditions for the admissibility of extradition so that, after the applicant is extradited, the trace and compliance with the criminal framework», but which, in the absence of facts that support it, is nothing more than a puerile argument, completely innocuous for the decision on the merits of the case.

18. Finally, it is necessary to comment on the personal and family reasons invoked by the applicant as a ground for opposing extradition. Now,

19. The Supreme Court of Justice ruled on a situation identical to the one in the case file, by judgment of May 14, 2020, delivered in case 498/18.0YRLSB.S1 (consultable at www.dgsi.pt), in the following terms :

«Provides for article 4, al. b) of the Treaty that “Extradition may be refused if: b) Extradition is incompatible with humanitarian

considerations on account of the age, health or other conditions of the person sought.”

In a similar vein, article 18, no. 2, of the LCJ provides that:

“Cooperation may also be denied when, taking into account the circumstances of the fact, the granting of the request may entail serious consequences for the person concerned, in reason of age, state of health or other personal reasons”.

The jurisprudence of this STJ has been the majority understanding, which does not fit as a reason for refusing extradition provided for in article 18, no. the fact that the person being extradited has family (children) residing in our country. It has been decided that separation from the family is an “inevitable” consequence of extradition (and, consequently, of the suspicion of committing a crime) and that it does not override the superior interest of international cooperation in the continuation of the good administration of justice. .

Here are some examples of this understanding:

- STJ ruling of 1/11/2018, Proc. N.º 1331/17.6YRLSB.S1 - 3rd Section, Manuel Augusto de Matos (rapporteur) [15] “VII - The removal of the applicant from his family due to his extradition does not constitute - for the purposes of the provisions of art. 8 of the ECHR - serious injury or damage to the same, specifically of a higher degree than that which that cooperation measure normally implies. On the other hand, serious consequences resulting from other reasons of a personal nature cannot be considered those consequences that are the rule for those who have a family and will have to serve a prison sentence”.

- STJ ruling of 01-07-2016, Proc. No. J3/15.0YRLSB.S1 - 5th Section, Isabel Pais Martins[16] “VII - It is unquestionable that the granting of the extradition request and the possible execution of the sentence in the Federative Republic of Brazil, within the scope of the process in which the request is made, it implies a break in the life project of the person being extradited in Portugal, with costs on a personal, affective and professional level. But this consequence is the normal consequence of the "forced" removal from the national territory involved in extradition. VIII - The serious consequences that the granting of the request may imply for the person concerned claimed for the optional denial of international cooperation, under the terms of paragraph 2 of art. 18 of the said Convention, cannot be identified with those that are common to all cases in which extradited persons came to establish their nucleus of personal and family life in the requested State, under penalty of a generalized refusal to cooperate, contrary to the ideals stated in the preamble to the Convention. IX - In view of the seriousness of the fact, reflected, namely, in the conviction, although not yet passed, for the practice of a crime of murder, it must be recognized that the consequences of extradition - removal of the person being extradited from the national territory, where he is family, socially and professionally inserted, with a break, at least physically, of the affective

ties with the partner and the children – they do not constitute injury or damage of a higher degree than that which that form of cooperation, normally, by its very nature, implies (art. 18. No. 2 of the Convention).

- STJ ruling of 08-08-2014, Proc. ne 364/14.9URLSB.S1 - 3rd Chamber, Raul Borges (rapporteur)[17] “V - The appellant alleges a set of personal conditions, which, in his opinion, determine the denial of cooperation, pursuant to paragraph 2 of art. 18 of Law 144/99. However, in the present case, there are no consequences in terms of age (currently the appellant is 36 years old), of the defendant's health, and as mentioned in the judgment of 19-01-2012, delivered in Proc. 242/11.3YRCBR.S1 - 5th, serious consequences due to other personal reasons cannot be considered those consequences that are inherent to the extradition process, which are the rule for those who have a family and a job and will have to comply with a prison sentence.

- Judgment of 05-03-2012, Proc. nJ 205/11.9GYRCBR.S2 - 5th Section, Isabel Pais Martins (rapporteur)[18] “IV - Paragraph 2 of art. 18 of Law 144/99, of 31-08, by providing for the possibility of denying the extradition request when it may have serious consequences for the person concerned, due to age, health status or other personal reasons , makes the optional denial of international cooperation dependent not only on the aforementioned personal consequences but also on a judgment of balance of interests between the criminal act and those consequences, a balance in which the confrontation between the seriousness of the act and the seriousness of the consequences of extradition for the person concerned. However, given the seriousness of the fact, reflected, namely, in the accusation for the practice of 2 crimes of drug trafficking, it must be recognized that the alleged consequences of extradition - removal of the person being extradited from the national territory, where he/she is socially and professionally inserted, with the breaking of affective ties with his/her partner and her child - do not constitute injury or damage of a higher degree than that which that form of cooperation normally, by its very nature, implies. ”

It is true that in the extradition request made by the People's Republic of China, it appears that the request for the extradition of both parents of 3 children, still very young, is at issue.

We take it for granted that these circumstances present some singularity, however, they are not isolated cases, as it appears from the aforementioned edges.

It should be noted that in the present case, the Extradition of the appellant (mother) is not being authorized for the fulfillment of a prison sentence, but for criminal proceedings. It is not known to which coercive measure she will be subjected and, if the final one, she will be sentenced to an effective prison sentence, so it is not known, specifically, whether the mother will be automatically deprived of family life with her children (assuming that is the parents' option to send their children to China).

We understand, therefore, that the instability/family rupture caused by the Appellant's Extradition to China is not sufficient reason for refusing extradition under the terms of article 6, al. f) of the LCJ and/or article 4, al. b), of the Treaty, insofar as the circumstance that motivates the family breakup was created by the extradited woman (suspected of committing crimes in China, where she is a national) and only she is attributable (having fled the country where he committed the alleged crimes).

If we understand that the constitution and/or increase of the family in Portugal, is a reason for refusal of Extradition, conditions would be created for the impunity of those who knowingly committed crimes (vg in the country of which they are nationals) and if they wanted to evade the action of justice. »

20. Thus, as can be seen from the sentence cited, as well as from the other cited in the learned judgment under appeal, of April 23, 2020, rendered in case 498/18.0YRLSB.S1 (consultable at www.dgsi.pt), and corresponds to the majority sense of the jurisprudence of the Supreme Court of Justice, the personal and family reasons invoked by the appellant are incapable of constituting a ground for refusing extradition.

21. Moreover, the difficulties that the appellant's extradition to the PR of China will bring to her family will not be substantially different from those that she would have to face if she had to serve a prison sentence in Portugal for a crime committed in our country.

22. In addition, in the words of the aforementioned judgment of May 14, 2020 of the Supreme Court of Justice, "if we understand that the constitution and/or increase of the family in Portugal is a reason for refusing extradition, conditions would be created for impunity of those who knowingly committed crimes (eg in the country of which they are a national) and if they wanted to evade the action of justice».

21. In any case, in the event of refusal of extradition for humanitarian reasons, a hypothesis that is considered only out of caution, it could not be said that it would be enough for the PR of China to ask our country to continue the criminal procedure in order to avoid the impunity for the appellant for the crime she is suspected of having committed: it is that no one with the slightest knowledge of the Portuguese judicial reality could believe that the investigation of a financial fraud of several hundred million euros, committed in the PR of China, against hundreds of Chinese citizens, could one day reach a good port... in fact, any port at all! So,

22. In a nutshell, refusing the appellant's extradition would, purely and simply, grant her impunity for the extremely serious crime she is suspected of having committed - given that the nature of the crime, in this particular, is not relevant to the assessment of humanitarian reasons, since they would not cease to be invoked even if the crime attributed to the applicant was not economic and financial, but, for

example, against people or against public peace, such as murder or terrorism.

23. It should also be noted that the appellant's extradition is not being authorized for the purpose of serving a prison sentence, but only for criminal proceedings, it is not known whether, in the end, she will be sentenced to an effective prison sentence. , having necessarily to admit that she may even be acquitted or that, in case of conviction, it is not in effective prison or that it is in prison sentence of less than ten years.

24. Finally, the invocation of the provisions of article 135 of Law 23/2007, of July 4th, is meaningless, since this regulation applies only in relation to the expulsion from the national territory of those who find themselves in one of the foreseen situations. by article 134 of the same law, which is clearly not the case with the appellant. Indeed,

25. We are certain that the appellant is not unaware that the Constitution of the Portuguese Republic and the infra-constitutional legislation allow the extradition of nationals residing in Portugal in certain circumstances, which only reinforces the light character of its arguments.

In view of the foregoing, the reasons given by the appellant do not constitute any basis for refusing to comply with the Extradition Request and there is also no question of any defect, whether of a substantive, formal or adjective nature, in the necessary assumptions and grounds that led to against the decision on appeal, no objection can merit the judgment under appeal, which granted the delivery of the appellant AA, which is why we believe that it should be confirmed, thus rejecting its appeal.

3. Once the visas were obtained, the process was presented to the conference for a decision.

II - Rationale :

II.1. The judgment of the Court of Appeal ... of January 19, 2022, as to proven and unproven facts, reasons for the facts and legal grounds, reads as follows (transcription):

I.

Report:

1. Under the terms of article 50, no. 2, of Law no. 144/99, of 31 August, the Public Prosecutor at this Court promoted the fulfillment of the request for the extradition of the Chinese citizen AA - married, born on .../.../1978, in the province

de ..., holder of Chinese passport No. ..., issued on ... to March 21, 2017, valid until March 21, 2027, residing at Rua ... (currently at Quinta..., ...), on ..., Portugal, presented by the People's Republic of China for the purposes of criminal proceedings relating to the alleged practice of a crime of obtaining funds by fraudulent means, practiced from October 2013 to August 2018, punishable by the Article 192 of the Criminal Law of the People's Republic of China with a life sentence.

The Public Prosecutor's Office invokes that the extradited person is wanted by the judicial authorities of the People's Republic of China - ..., for having publicly promoted, as legal representative of the company S..., private equity financial products to people, by telephone and from out loud, in collusion with others, using as a lure a high yield of 7.5% to 16%, thus having managed to illegally receive 2.098 billion CNY from a group of unspecified people, but more than 414, which he used for the purchase of real estate and for personal consumption, causing the non-payment of 612 million CNY, which at the current exchange rate is equivalent to the amount of around 79 million euros.

The defendant was arrested in the city of ... on 19.4.2021, heard in this Court of Appeal on 20.4.2021, within the scope of the detention validation process No. 61/21..., of the 4th..., attached, confirmed the detention, which was later replaced by the coercive measures of periodic presentations and ban on going abroad.

2. After the injunction was issued, the extradited person was heard, under the terms provided for in article 54 of the aforementioned Law No. 144/99, and she expressed her opposition to the extradition request made by the People's Republic from China, and not having renounced the principle of specialty.

The coercive measure of periodic presentations was applied to him.

Notified under the terms and for the purposes of the provisions of article 55 of the aforementioned legal diploma, the defendant came to oppose the extradition request, invoking, for that purpose, reasons that she set out as follows:

a) Nullity of the records due to the absence of the Order of Mr. State Secretary;

b) Invalidity of the guarantee presented by the Chinese Embassy because Note n° 27 is not complete;

c) Insufficiency of the Guarantee as it does not include the decision taken by the Supreme People's Court;

d) Insufficiency and lack of clarity in the binding of the Ministry of Foreign Affairs;

e) Insufficiency and lack of clarity in the text of the "Guarantee", raising doubts as to whether the guarantee was effectively provided;

f) Humanitarian reasons related to the situation of the Extradited and her Family; and

g) Factual errors in the matter on which the extradition request is based.

3. The defendant added documentary evidence and requested the questioning of witnesses.

The witnesses were questioned.

In the final arguments they presented, the Public Ministry and the extradited person reaffirmed the positions previously taken.

Once the legal visas had been obtained, the case file went to the conference, and it is now time to consider and decide.

II.

Rationale

1. Prior question:

- Nullity of the process

In her written arguments, the extradited person raised the preliminary issue of the non-existence in the records of the order referred to in art. 48 of Law no. 144/99, of 31 August (hereinafter referred to as LCJ for short).

The extradition process comprises two distinct phases: an administrative one, in which the Attorney General's Office is responsible for receiving the extradition request, which must be instructed with the elements referred to in arts. 23 and 44 of the LCJ, prepare an opinion and send it to the Minister of Justice, who decides to grant or defer the request; and a judicial phase, preceded by the order granting the extradition request by the Minister of Justice, with the procedural impulse being the responsibility of the Public Prosecutor of the Court of Appeal competent for the extradition process – arts. 48th and 50th of the LCJ.

It is this order, a condition for the commencement of the judicial process, that the extradited person refers to not having been issued.

Let's see:

in art. 5 of the initial application, the Public Prosecutor's Office refers to the following:

“The Formal Extradition Request was submitted to the Portuguese Authorities, and His Excellency the Assistant Secretary of State and Justice, through the delegated competence of His Excellency the

Minister of Justice, by order of August 4, 2021, considered the extradition request admissible. ”.

However, and as the extradited person claims, no such order was attached.

It so happens that the Public Prosecutor's Office at this Court of Appeal, notified of the opposition, added to the file the original of the order referred to, whose original is on fls. 165 of the case file, the content of which is as follows:

«The People's Republic of China requests the Portuguese Republic to extradite the Chinese citizen AA, under the Treaty between the Portuguese Republic and the People's Republic of China on Extradition, signed on ... on January 31, 2007.

Within the scope of the criminal proceedings in the Crime Investigation Department

Economics of the Ministry of Public Security of the People's Republic of China, the extradited person is suspected of the practice of (1) a crime of fraud to raise funds, provided for and punished by article 192 of the Criminal Law of the People's Republic of China, with the maximum penalty abstractly. applicable to life imprisonment, for acts committed from October 2013 to August 2018.

The facts imputed to AA by the Chinese judicial authorities are in accordance with the Portuguese legal system in the crimes of qualified fraud and the unlawful activity of receiving deposits and other reimbursable funds, provided for and punished, respectively, by articles 217 and 218, n. 2, al. a), of the Penal Code and article 200 of the General Regime for Credit Institutions and Financial Companies, approved by Law no.

Pursuant to the provisions of article 118, paragraph 1, subparagraph a), of the Penal Code and in accordance with the provisions of article 87, paragraph 2m, of the Criminal Law of the People's Republic of China, the respective criminal procedure is not shows extinct as a result of the statute of limitations.

The application of life imprisonment is prohibited by the Portuguese legal system and, consequently, its verification, in the specific case, is identified, in article 3, no. imperative ground of refusal.

However, article 6, paragraph 2, paragraph b) and paragraph 3, of Law n.º 144/99, of 31 August, admits that cooperation, in the case of extradition for crimes punishable by imprisonment life, may take place if the requesting State offers guarantees that such a penalty will not be imposed or carried out.

Thus, as is clear from the Verbal Notes of 16 and 22 June 2021, the Government of the People's Republic of China guarantees, pursuant to article 50 of the domestic law on extradition of the People's Republic of

China, based on a decision of the Supreme People's Court of People's Republic of China that, in the event that AA is extradited from Portugal to China and convicted by a Chinese court for the facts for which the extradition was requested, the Trial Court will not sentence her to life imprisonment.

This guarantee is, pursuant to the aforementioned legal provision, binding on all Chinese courts.

Having analyzed the request and its factual grounds, it is concluded that, through the provision of guarantees, the grounds for refusal provided for in Article 3 of the Treaty between the Portuguese Republic and the People's Republic of China on Extradition have been overcome and there are no such refusals. that result from domestic law, namely because the extradited person is not a Portuguese national, the crime that is now imputed to her is also foreseen by the Portuguese legal system and guarantees were provided regarding the reason for refusal mentioned in article 6, paragraph f) , of Law No. 144/99, of 31 August.

Thus, under the terms explained above, under the provisions of the Treaty between the Portuguese Republic and the People's Republic of China on Extradition, signed on ... on January 31, 2017 and in article 48, no. 144/99, of 31 August, I consider the extradition request made by the People's Republic of China in relation to AA admissible. (signed by the Minister of Justice Francisca Van Dunem, in digital form, Mário Belo Morgado)».

After the extradited woman was notified of the joining of the document, she said nothing.

Having the order referred to in art. 48 of the LCJ was delivered in time, and in the sense of the admissibility of the extradition, with its addition to the case file, the irregularity that the case suffered was overcome.

2. Basis of fact

a) Proven facts (relevant to the decision of the case)

1 - Under the Treaty between the Portuguese Republic and the People's Republic of China on Extradition, signed on ... on January 31, 1907, the competent authorities of the Republic of the People's Republic of China requested the Portuguese State to extradite the citizen AA , better identified above, for the purposes of criminal proceedings relating to the crimes described in point 1 of the "Report", above.

2 - By order issued, under the provisions of paragraph 2 of art. 48 of Law No. 144/99, of August 31, 2021, on August 4, 2021, His Excellency the Assistant Secretary of State and Justice, through the delegated competence of His Excellency the Minister of Justice, considered the request admissible. of extradition, given the guarantees sent by the

Authorities of the People's Republic of China that the sentence of life imprisonment will not be applied to the extradited person.

3 - The facts that are the basis of the criminal procedure, and that are gleaned from the request for cooperation, are the following:

a) FF formed a special sales team on ..., from October 2013 to August 2018, without approval from the national finance authority, to sell private equity funds established in the name of H... through H.. • to illegally absorb deposits from the public;

b) FF had been hired by GG, the person who controls G..., this group having established H..., for the position of general manager to sell those private equity funds;

c) FF was responsible for the administration and operation of H..., and agrees with GG that FF's sales team would receive a commission of 6% of the total sales value of the funds;

d) In addition to training sales teams in speaking skills, FF formulated a system for managing salespeople's salaries;

e) The team formed sold private equity funds, without real projects, using as bait returns of 7.5% to 16%, through telephone calls, word of mouth and others;

f) In this way, it absorbed 2.098 billion yuan from 414 victims, knowing that G... and its subsidiary companies did not have the relevant qualifications to absorb deposits from the public and sell private equity funds and that most private equity were not registered with C... and related investment projects did not exist;

g) Caused a loss of 612 million Yuan, and fled abroad.

4 – The facts briefly described indicate the practice by the extradited woman of a crime of obtaining funds by fraudulent means, punishable by article 192 of the Criminal Law of the People's Republic of China with life imprisonment.

5 - No criminal proceedings are brought before Portuguese courts against the person being extradited for the same facts on which the present extradition request is based.

6 – On 6.16.2021, the Embassy of the People's Republic of China issued Note No. (2021) 24, as follows:

“The Embassy of the People's Republic of China in the Portuguese Republic offers its compliments to the Attorney General's Office of the Portuguese Republic and has the honor to inform you of the following:

According to article 50 of the Extradition Law of the People's Republic of China and the decision of the Supreme People's Court of the People's Republic of China, in the case of the extradition of the FF from Portugal to China, if the FF is convicted by a Chinese court for

the facts underlying the extradition request, the trial court will not impose a sentence above life imprisonment (including life imprisonment) in accordance with the law. (...)”

7 – Subsequently, the same entity issued Note (2021) No. 27, as follows:

"The Embassy of the People's Republic of China in the Portuguese Republic gives a warm greeting to the Attorney General's Office of the Portuguese Republic and has the honor to refer to the case of FF, a suspect whose extradition was requested by the Chinese side to the Portuguese side, and provides the following clarifications and guarantee on the application of the penalty in the referred case.

FF is a suspect in the crime of fundraising fraud. Pursuant to article 192 of the Penal Code of the People's Republic of China, the applicable penalties for this crime include imprisonment and life imprisonment. Under the Penal Code of the People's Republic of China and the Criminal Procedure Code of the People's Republic of China, whether AA's conduct constitutes a crime and whether and what type of penalty AA should be sentenced is for the trial court to pronounce, with based on the facts, evidence and relevant laws after AA was extradited to China. The text of Article 192 of the Penal Code of the People's Republic of China was cited in the extradition request”.

8 - And attached:

“Article 50 of the Extradition Law of the People's Republic of China:

In the event that the requested State grants extradition with additional conditions, the Ministry of Foreign Affairs may, on behalf of the Government of the People's Republic of China, provide a guarantee provided that the sovereignty, national interests and public interests of the People's Republic of China do not be harmed. The guarantee with respect to the restriction of the process will be subject to the decision of the Supreme People's Attorney, and the guarantee with respect to the application of the penalty will be subject to the decision of the Supreme People's Court.

When investigating the criminal responsibility of the extradited person, judicial bodies must be bound by the guarantee provided.”

9 - *The Extraditatie is married to a Chinese citizen, and has three children: HH, born on .../.../2006; CC, and DD, both born on .../.../2018. The eldest son has Chinese nationality, and the two youngest, born in Portugal, have Portuguese nationality.*

10 – *The husband of the Defendant. he is a sick person, with diabetes and severe dyslipidemia with a poor prognosis.*

11 – *The Respondent was detained on April 19, 2021, in compliance with the arrest warrant issued by the Chinese authorities, and remained in provisional detention.*

12- Following the communication of the defendant's detention situation to the Social Security services of ..., a social report was prepared dated 6.16.2021, which includes the following:

“On May 20, 2021, this EMAT carried out an assessment of the situation of the household.

An interview was carried out with the parent in the context of a home visit, and it was not found that the children were in a situation of danger, however the mother was the one who performed the functions of caregiver and, given the absence of a maternal figure, for the reason that she was detained in the prison establishment..., and given the parent's difficulties in reconciling domestic routines with child care, since they are two children aged two and who require permanent adult attention, this EMAT endeavored to integrate the CC and DD children in school equipment.

After these services ensured a place in the day care center, CC and DD joined the school context on May 24, at the day care center ... of According to the kindergarten teacher, integration took place normally.

The director of C..., an establishment frequented by the young EE, was also contacted. According to the director of the school, the young man is well integrated, being a committed student with good academic performance and exemplary behavior with the entire educational community.

The family situation was well taken care of, the children and young people were in school equipment during the day, allowing the father to self-care and organize daily life routines, given the role of full-time caregiver, thus fostering a more relaxed family environment. calm.

However, the health status of the parent suddenly worsened, putting the young person and children in a situation of vulnerability. On 06/13/2021, due to an episode of hospital emergency, following a state of hyperglycemia and cardiac complications, the parent was hospitalized for medical observation, with clinical discharge on 06/14/2021. This situation was reported to the medical emergency line 112, by family friend II, residing in

The household has no family support, currently they have the support of the daughter and son-in-law of II, JJ and KK, respectively, who traveled to ..., on 06/14/2021 to support the parent, children and young people. However, the support of JJ and KK is punctual, since the couple has to return to ... today (16/06/2021), in the late afternoon (around 17:00h), for work reasons , thus leaving the household in a situation of great vulnerability. (...)

We also inform you that the friend couple, JJ and KK, are arranging for the hiring of a maid to provide support to the parent, with regard to the organization and hygiene of the house and daily life routines, in view of the worsening of their health situation, to facilitate the recovery

of this father. In this way, and if this situation occurs, the protection of the young EE will be safeguarded, since, according to what we can ascertain, he is responsible and reveals a capacity for interaction, autonomy and maturity that allows him to adapt to the relational level with the father and siblings and affective and behavioral adequacy. (...)

In view of the worsening of the health situation of the parent, in order to safeguard the well-being of the young EE (14 years old), we propose the application of the measure of promotion and protection of support with the father.

With regard to children CC and DD (2 years old), given the lack of support from the friendly couple, as of late afternoon today (around 17:00h), their lack of protection could lead to worsen the family situation and put the young EE in danger and compromise the entire balance of the family system. In this sense, in order to safeguard the well-being of CC and DD children, due to the specific developmental needs and the demand for greater care, and only for the period strictly necessary for the father's recovery, we propose the application of the foster care promotion and protection measure. residential in a Temporary Shelter, close to the parent's area of residence, on ... of Given the fragility of the state of health, the father accepts the application of the measure (...) ”

13 – On the same date (16.6.2021) the precautionary measure applied to the defendant was changed to periodic presentations and a ban on leaving abroad, within the scope of the attached detention validation process.

14 - A Process for the Promotion and Protection of Minors was started in the Family and Minors Court... on 6.17.2021, and on that date an order was issued that provisionally applied to CC and DD children the urgent residential care measure, being welcomed in the ... de ..., and to the child EE the support measure with the father, for a period of 6 months, until the best referral for these children is decided and while the disabling health problems of the parent that led to hospitalization in ... of children, and youth support measures.

15 – On the same date, the following information from the NIJ was added to that process: “The technicians found that with the return of the mother, currently the household meets the conditions to safeguard the well-being of children and young people, so the situation of danger where the children were, currently, is not the case, and the couple even showed their willingness to return the children to themselves” – which happened, and the support measure was applied to the parents.

16 - The twins spent two days at

17 - The Defendant she is currently, as she was before, the person who takes care of the children, and now also the husband, due to her state of health.

18 - Minors do not have any other family members in Portugal besides their parents.

19 – Young HH attends school in ..., being perfectly integrated and making the best impression on the teachers.

20 – The defendant and her husband do not work and have no income in Portugal.

21 – They acquired real estate in Portugal, in the cities of ... and ..., and do not speak Portuguese.

b) Unproven facts:

- The Extraditante's husband is completely unable to take care of the children, namely the three-year-old twins;

- The 2 days of hospitalization in ... were enough to cause behavioral changes in the youngest children of the defendant;

– After leaving the ... and being handed over to their mother, the children went through anxiety attacks, crying whenever the mother separated from them for any reason, even for a short time;

– For long weeks, children woke up at night and cried for their mother, and only went back to sleep when their mother was with them;

– The absence of the mother generated anxiety situations for the children;

– BB's situation has been getting worse, and today he is unable to take care of any of his children, including the oldest;

- The extradition of the Defendant. it will dissolve the family, and it will disturb dangerously, perhaps irreversibly, the normal development of the children;

- If the defendant is extradited to China, the fate of her children would be institutionalization;

– BB would have to be admitted to a hospital in order to receive the care he needs; and the children would have to be handed over to Shelter Centres, probably with separation from the siblings, taking into account the age difference, and most certainly without any possibility of seeing the parent again.

– The same can be said for the mother, her return to Portugal being unlikely;

– The minors, with the extradition of the mother, will have all their future training completely at risk, placed in Reception Centers, in environments and cultures widely different from their own.

- Minors, namely children, already of Portuguese nationality, would grow up without any contact with their parents;*
- And the young person, at a crucial age for personality formation, would also be withdrawn from the family environment, without contact with his parents and without any other reference to the habits of life and culture that he always had in his family, with his country.*
- Probably this situation would be profoundly changed with the mother's extradition, certainly even with a change of school.*

And still:

- The extradited person currently has no ties to the People's Republic of China, nor will she have any support there, for herself and her family, if she is extradited;*
- The extradited woman's parents are 70 years old; her father was hospitalized last week with liver cancer and is awaiting surgery; the mother has coronary problems and suffers from depression;*
- The extradited woman's parents live with difficulties, as they were greatly affected by the bankruptcy of the company where their daughter worked;*
- The extradited woman's husband, BB, has a living mother, over 80 years old, who lives in a nursing home;*
- Due to the fact that the extradited person has a case in court, she is away from her friends, as judicial problems are very poorly regarded in China;*
- He doesn't have a house to live in, because the house he had was seized;*
- Your husband does not have health insurance and will find it very difficult to go to the hospital for treatment;*
- The oldest child will not be able to continue studying; the school at ... where he studied asked his parents to sign a waiver before they left, and he will not be able to re-enroll;*
- Younger children, as they have Portuguese nationality, will not be able to attend public school, but only international schools, which are very expensive;*
- The same applies to medical assistance, as they will not be entitled to public hospitals, unless they have health insurance.*

c) Court conviction:

The Court based its conviction, in relation to the proven facts:

- In the documents on pages 6-54 and 55-79 (request for extradition, and respective translation, where the grounds for the same are stated) – facts proven in 1 and 3 to 5;
- In the documents on pages 80-81, as to proven facts nos. 6 to 8;
- In the document on pages 97-98, as to proven fact no. 2;
- In the documents on pages 198-201 and 55-70 of the attached file, regarding fact no. 9;
- In the document on pages 268-272 of the attached case, as to fact no. 12;
- In the document on pages 4-11, regarding fact no. 11;
- In the orders made in the attached process regarding the coercive measures of the defendant – facts no. 11 and 13;
- In the medical report on pages 127 of the attached file, and clinical diary on pgs. 197 of the main proceedings – fact no. 10;
- In the social reports on pgs. 136-138, 178-184, information on pages 140-141 and 144-145, and order on pages 143 – facts no. 14, 15, 16, 17, 18, 19 and 20;
- In the documents on pages 85-93 (attached file), report on pages 183-184, document on pages 134 (this one in the attached case), as to the fact proven on 21.

The testimony of the witness LL, a teacher at C..., in ..., was revealed, insofar as the educational establishment has been attended by the defendant's eldest son, EE, since the 2020/2021 academic year. The witness confirmed that his mother was his guardian, who in June spoke only a few words in Portuguese; that in June the student was absent, and he called his father, knowing that he was in the hospital emergency room and the mother was in detention; that they have a friend in ... who helps the family, and who spoke to the witness; that the minor was concerned about his father's health, and the mother was afraid to return to China.

The witness MM, a lawyer in the district ..., mentioned that the defendant was presented to him in 2019, on ..., through an association to support Chinese emigrants, stating that the defendant had 2 houses, one in the ... and another in ..., and who was isolated in the city, speaking only the English language; that the defendant would not have support in ...; that her husband is diabetic and has poor eyesight; and just contact the defendant by message, seeing her as a lonely person, without friends or support, with no one to leave her children to.

To this extent, they confirmed the facts proven in 17, 18, 19, 20 and 21.

Regarding the unproven facts, no evidence was provided that would allow for the conclusion to be verified, and they are not even minimally supported either by the documentary evidence or by the testimonial evidence produced in the context of the present case.

The alleged facts relating to the defendant's alleged criminal activity were not considered – point IV of the opposition.

In fact, it is not in this process to determine whether or not the extradited person committed the facts imputed to her; since the extradition process does not aim at judging the facts that underlie the respective process. In fact, pursuant to art. 46, no. 3, of the LCJ, such evidentiary investigation is expressly prohibited; and, according to art. 55, no. 2, of the same LCJ, the opposition “can only be based on the fact that the detainee is not the person sought or on the fact that the extradition assumptions are not verified”, so the evidence and facts relevant to the decision of this process only on these assumptions can respect - which was opportunely recorded in an order issued in the case, and which is reiterated.

3. Legal basis

A) From the Guarantee presented by the People's Republic of China:

The extradited woman alleges that the “guarantees” provided, consisting of Verbal Notes issued by the Embassy of the People's Republic of China, do not constitute a sufficient guarantee that she will not be sentenced to life imprisonment by a court in China,

Let's see:

As is well known, extradition is one of the forms of international cooperation in criminal matters, through which a State (requesting) requests from another State (requested) the surrender of a person who is in its territory, for the purposes of criminal proceedings or for the execution of a sentence or security measure depriving of liberty, for a crime whose judgment falls within the competence of the courts of the requesting State.

The conditions under which extradition is admissible and may be granted, when Portugal is a requested State (passive extradition), are set primarily by the provisions of international, multilateral or bilateral treaties on extradition to which Portugal is a party, and, in general, by the provisions of juridical, substantive and procedural, established in the legal regime concerning international cooperation in criminal matters (Law no. 144/99, of 31 August, hereinafter referred to as LCJ for short).

Extradition is governed by the rules of international treaties to which the requesting state and Portugal are parties, by international

conventions and agreements that bind the Portuguese State and, in their absence or insufficiency, by the rules of the LCJ, the provisions of the Code being subsidiarily applicable. of Criminal Procedure (art. 3 of the LCJ).

Between the Portuguese Republic and the People's Republic of China, a Treaty on Extradition was signed on 31 January 2007, which was approved by Resolution of the Assembly of the Republic no. President of the Republic no. 43/2009, of 30.4.2009, and published in the Diário da República, 1st Series, no. 84, of 30.4.2009. This will be the Treaty to be applied primarily to the case, and, in addition, other treaties and conventions to which both States, the LCJ and our Code of Criminal Procedure are party.

However, it emerges from art. 6, no. 1, als. e) and f), of the LCJ that the extradition request is refused when the fact to which it relates is punishable by the death penalty or life imprisonment – as happens in casu.

However, it provides for paragraph 2, al. b), from the same precept that cooperation takes place if “the requesting State offers guarantees that such penalty or security measure will not be applied or enforced”.

It does not explain the law to which guarantees it refers.

In this case, we have as evidence that two Diplomatic Notes were issued, the first (no. that life imprisonment will not be applied, despite the expression used - "above" -, by itself without any meaning, since the guarantee states that it will not be applied); however, later, and on a date that was not recorded, it issued a new Diplomatic Note (No. 27), annexing the legal rule of the People's Republic of China on the basis of which the first Note issued was based. It should be noted that the contacts were established between the communication channels provided for in the Treaty on Extradition signed between Portugal and China, as provided for in its art. 6th.

The Embassy, in the person of its Ambassador (Chief of Mission), represents the respective State and, a fortiori, the Ministry of Foreign Affairs – art. 3rd, al. a), of the Convention on Diplomatic Relations, signed in Vienna on 18 April 1961, approved in Portugal by Decree-Law no.

the art. 50 of the Extradition Law of the People's Republic of China, a law to which the courts of the People's Republic of China are naturally bound, states that "The Ministry of Foreign Affairs may, on behalf of the People's Republic of China, provide a guarantee...", that " the guarantee with respect to the application of the penalty will be subject to the decision of the Supreme People's Court"; and further that “When investigating the criminal responsibility of the extradited person, the judicial bodies must be bound by the guarantee provided”.

It is thus clear that in cases where the Ministry of Foreign Affairs of the People's Republic of China presents a guarantee to the third State that imposes additional conditions on extradition, the Chinese judicial bodies are bound by it. In fact, if such a guarantee is internally dependent on a previous decision of the Supreme People's Court of the People's Republic of China, it is not the Portuguese Republic, within the scope of bilateral diplomatic relations, that has to verify that it was issued and the respective regularity, rather resulting from the principle of good faith in force in international relations between sovereign states that the information transmitted through diplomatic channels corresponds to reality.

Thus, combining the aforementioned norms, it follows that the Head of State Mission in a third country, in this case the Ambassador (Article 14 of the Convention on Diplomatic Relations), can assume, on behalf of his Government, the official commitment not to come to sentence of life imprisonment may be applied - a commitment that, in the aforementioned terms, is binding on the judicial bodies of the respective country -, and it is not necessary that it proves that it is formally authorized either by the Ministry of Foreign Affairs or by the Supreme People's Court - thus being unnecessary the communication of the provision of guarantee by the judicial body itself, contrary to what was alleged by the extradited person.

The guarantee stems from the complex of competences and powers that are recognized by the Diplomatic Missions, which carry out the activity of diplomatic representation of their country. In addition, the Diplomatic Missions issue Notes, which are known to be the means of communication par excellence between the accrediting State and the accrediting State. Thus, the Diplomatic Notes are valid for their content, they are binding on the State of the Mission that issues them, enjoying iuris tantum presumption as to their authenticity and veracity - which derives from the aforementioned principle of good faith and the principle of mutual trust, in force in the international relations between sovereign states.

In short, the sincerity of diplomatic commitment is assumed.

On the other hand, being mostly simple transmissions and resulting from verbal information, the Notes do not obey a strict formalism, it is enough that they mention who issues them and to whom they are addressed - being totally unnecessary for them to invoke the quality in which they are issued, the which stems from the very nature of the Diplomatic Mission in question. Thus, from the fact that it is not signed or dated, it is not possible to extract that Note no.

Thus, the People's Republic of China assumed the diplomatic commitment not to apply the sentence of life imprisonment to the extradited person, with the strong guarantees inherent to the assumption of behavior by a sovereign State towards another State.

The same was understood by the Portuguese Minister of Justice, who, in the order given under the provisions of art. 48, no. 2, of the LCJ, mentions the following: “Thus, according to the Verbal Notes of June 16 and 22, 2021, the Government of the People's Republic of China guarantees, under the terms of article 50 of the domestic extradition law of the People's Republic of China, based on the decision of the Supreme People's Court of the People's Republic of China that, in the event that AA is extradited from Portugal to China and convicted by a Chinese court for the facts for which the extradition was requested, the Court of judgment will not sentence her to life imprisonment” – a condition for the admissibility of the defendant's extradition.

And as for the possibility of applying a PENALTY OF INDEFENSE DURATION, to which the reason for refusing extradition provided for in the same art. 6, no. 1, al. f), of the LCJ?

This is a penalty contrary to the constitutional principles in force in Portugal, and, therefore, an imperative ground for refusing extradition established in the Treaty on Extradition signed between Portugal and China, as well stated by both the extradited person and the Public Prosecutor's Office - art. 3, no. 1, al. h): “Extradition shall be refused if: the execution of the request would jeopardize the sovereignty, security, public order or other essential public interests of the requested Party or if it would be contrary to the fundamental principles of its domestic law”.

Regarding this allegation by the extradited person, the Public Prosecutor's Office added to the file information on the subject provided by the Ministry of Foreign Affairs of the People's Republic of China (pages 168), stating that the maximum penalty to be applied to the extradited person will be 15 years in prison, in terms of art. 45 of the Penal Code of the same country. This rule, inserted in the section on “Detention for a determined time and life imprisonment” provides that “The duration of the prison sentence for a determined time cannot be less than 6 months nor more than 15 years, unless otherwise stipulated in Articles 50 and 69 of this law”. (pages 167).

The incriminating norm (Article 192 of the Penal Code of the People's Republic of China) reads as follows: “An individual who, for the purpose of illegal possession, collects funds by fraudulent means, if the amount is relatively large, will be sentenced to a specified prison term of not exceeding five years or criminal detention and fined not less than 20,000 yuan, but not more than 200,000 yuan; if the amount is large or there are other serious circumstances, he shall be sentenced to imprisonment of not less than 5 years, but not more than 10 years, and fined not less than 50,000 yuan, but not more than 500,000 yuan; if the amount is particularly high or there are other particularly serious circumstances, he should be sentenced to more than 10 years imprisonment or life imprisonment, and cumulatively fined more than 50,000 yuan and less than 500,000 yuan.”

In view of these rules, and according to information published by the People's Republic of China - which must be regarded as corresponding to the reality in that country -, the extradited person cannot be sentenced to an indefinite prison sentence, the maximum prison sentence being shall be subject to 15 years' imprisonment. In fact, the legal type of crime itself does not even provide for the application of an indefinite prison term.

For the above, nothing prevents the guarantee provided from being considered totally serious and valid, for the purposes of art. 6, no. 2, al. b), from LCJ.

B) Refusal of Extradition for Humanitarian Reasons:

the art. 4th, al. b), of the Treaty on Extradition signed between the Portuguese Republic and the People's Republic of China, provides for the Grounds for Optional Refusal, stating that "Extradition may be refused if: Extradition is incompatible with humanitarian considerations due to age, health or other conditions of the person claimed".

In the same sense, art. 18, no. 2, of the LCJ: "Cooperation may also be denied when, taking into account the circumstances of the fact, the granting of the request may entail serious consequences for the person concerned, due to age, state of health or other reasons of a personal nature".

Comparing the proven facts and even the very grounds for the opposition, it is clear that there are no reasons related to the defendant's age, health or other personal reasons that make extradition particularly burdensome for her.

In fact, the extradited person does nothing more than appeal to her family, social and economic situation and, in particular, to the difficult living conditions in which her husband, who is sick, and her three children could be. minors.

From the fact that he claimed, let's see what he managed to prove:

- The extradited person is married to a Chinese citizen, and has 3 children, aged 15 and 3-year-old twins, the youngest of whom are Portuguese nationals;*
- The extradited woman and her husband do not work in Portugal, and do not speak the Portuguese language;*
- The extradited woman's husband is a sick person, suffering from diabetes and severe dyslipidemia, with a poor prognosis;*
- They have no family in Portugal, and have few relationships with third parties;*

- *It is the extradited woman and her husband who ensure the care of the children;*
- *When the extradited woman was provisionally detained, between 4/19 and 6/16/2021, it was her husband who took care of the couple's 3 children;*
- *The eldest son attends a private school, and the twins were integrated into a day care center; after the mother's arrest, and through the intervention of Social Security;*
- *The extradited woman's husband took care of and organized the family's daily routines during the defendant's absence, in an adequate way, until her health condition worsened, having suffered hospitalization between 13 and 14.6, leaving the children without support;*
- *Due to the fragility of the health status of the extradited woman's husband, the minors at the age of 2 years, with the consent of the father, were taken in on ... on 16.6, leaving on 17.6, after the mother's release;*
- *It is the extradited woman who takes care of both her children and her husband.*

These facts, in particular those resulting from the content of the social reports prepared in the context of accompanying the minor children of the extradited woman, whose content is contained in the proven facts, correspond to the normality of life of any western family. In fact, and contrary to what was alleged, the extradited woman's husband managed to adequately take care of the couple's 3 children alone, with better quality after the intervention of social services that placed the youngest children in day care.

As for the health status of the extradited woman's husband, in the absence of other clinical information, it cannot be considered, in itself, disabling: the health problems that he has are unfortunately common, and he may suffer from occasional worsening, as happened, but they are known to allow a quality life as long as appropriate lifestyle habits are adopted and medical surveillance is maintained.

In fact, it is stated in the social report that the one who will be the only support for the couple in Portugal, a couple residing in ..., sought to hire a domestic worker, an adequate way of obtaining the necessary support for the well-being of the couple's children.

In other words, it is not possible to extract from the proven facts that the extradited woman's husband is not able to take care of the children (being certain that an acute illness situation or any other cause of temporary incapacity can always occur in any household, with the inherent difficulties), or that the minors will be institutionalized in ... in the case of origin of the requested extradition.

On the contrary, the circumstances described in the facts proved during the detention of the extradited person correspond to the natural discomfort and disturbance of the habits of life that an extradition always causes to the extradited person and his family, proving to be insufficient to legitimize the conclusion that the granting of the request would be susceptible of implying the “serious consequences” that the law requires for the decision to refuse cooperation to be accepted as correct.

If she intends to continue to reside in Portugal, naturally the extradited person's family, namely her husband, will have to make a serious effort towards inclusion, and their social and eventually work insertion will be sufficient to guarantee a harmonious and adequate growth for the children.

By the way, our Supreme Court of Justice has ruled that it does not fall within the grounds for refusing extradition, under the terms of art. 18, no. 2, of the LCJ, “serious circumstances for the person concerned due to other reasons of a personal nature”, the fact that the person being extradited has a family (children) residing in our country. It has been decided that separation from the family is an “inevitable” consequence of extradition (and, consequently, of the suspicion of committing a crime) and that it does not override the superior interest of international cooperation in the continuation of the good administration of justice. ”.

In fact, committing crimes and serving a prison sentence, in any country, is likely to cause a break in the person's affective ties with his or her family. This is normally the case with anyone suspected of committing a crime, and who is detained for that reason. The balance to be made will be between the seriousness of the facts indicted against the extradited person, and the seriousness of the consequences of the extradition. From the outset, it must be considered that with regard to the indicted facts, included in the extradition request (and whose punishability, either in the People's Republic of China or in Portugal, the extradited person does not question), no conviction has yet occurred, ignoring them. If the extradited person, at the end of the process that is taking place in China, will be sentenced, and if she will be sentenced to an effective prison sentence.

However, the decision of the extradited person's household to stay in Portugal or return to the country of origin will be the couple's. What is certain is that the duties to which the Portuguese State is constitutionally bound, of protection of the family, childhood and youth (articles 67, 69 and 70 of the Constitution of the Portuguese Republic, invoked by the extradited person), cannot yield to the right to the administration of justice. In order to guarantee the rights inherent to the family and the healthy growth of children and young people, Portugal has adequate public structures and services, as was well demonstrated during the detention of the extradited woman.

In short, the instability or family breakdown caused by extradition to the People's Republic of China is not sufficient reason for refusing extradition under the terms of article 4, al. b), of the Treaty on Extradition signed between the two countries, given that the circumstance that motivated the family breakup was created by the extradited person herself (suspected of committing crimes in China, where she is a national) and is solely attributable to her (having leaving the country where he committed the alleged crimes).

If we understand that the constitution and/or increase of the family in Portugal is a reason for refusing Extradition, conditions would be created for the impunity of those who knowingly committed crimes (vg in the country of which they are nationals) and if they wanted to evade the action of justice.

Which is completely unacceptable.

For the above reasons, the opposition raised by the extradited woman is totally rejected.

II. 2. Issues to be decided:

The following are the questions raised in the conclusions of the motivation by the appellant AA, of which it is necessary to know:

- a) The alleged lack of formal validity of the verbal notes, through which the authorities of the PR of China provided the necessary guarantees to the Portuguese State, for not having adopted the diplomatic protocol formula.
- b) Validity of the guarantee provided by the Chinese State that the appellant will not be sentenced to life imprisonment
- c) Refusal of Extradition for Humanitarian Reasons:
- d) Violation of the principle of equality provided for in article 13 of the CRP, due to non-application of article 135, no. Stay, Departure and Removal of Foreigners from the National Territory).
- e) Violation of the *In Dubio Pro Reo Principle*

II. 3. In the field of international judicial cooperation, in criminal matters, extradition emerges as the oldest form of collaboration between States. Through it, a State (the applicant) asks another State (the defendant) to hand over a person who is in the latter's territory, for the purposes of criminal proceedings or to serve a sentence for which he has been convicted.

It is an instrument of international cooperation that aims not only to avoid impunity, but also to contribute to the non-existence of territories that become places where criminals can take refuge.

As mentioned in the judgment of this Supreme Court of 30 May 2012, the admissibility of extradition, namely when Portugal is the requested State (passive extradition), is regulated by international treaties and conventions, and, in their absence or insufficiency, by the law on international cooperation (Law 144/99, of 31.08 - LCJ), and also by the CPP, as provided for in article 229 of this diploma and article 3, no. 1, of that Law. The application of Portuguese domestic law is therefore subsidiary (Cf. proc. n.º 290/11.3YRCBR1.S1, in www.dgsi.pt.)

The criminal cooperation relations between Portugal and the People's Republic of China are governed by the Treaty on Extradition signed on 31 January 2007, which was approved by Resolution of the Assembly of the Republic No. 31/2009, of 6.3.2009, ratified by Decree of the President of the Republic no. 43/2009, of 30.4.2009, and published in the *Diário da República*, 1st Series, no. 84, of 30.4.2009. This will be the Treaty to be applied primarily to the case, and, in addition, other treaties and conventions to which both States, the LCJ and our Code of Criminal Procedure are party.

In the extradition process, “surrender”, designating the legal and physical transfer of a person and constituting one of the elements of the process, is subject to the verification of certain requirements, some of a formal nature and others substantial.

Having said that and returning to the specific case, let's get to know the issues raised:

*

II. 4. Regarding the alleged lack of formal validity of the verbal notes, through which the authorities of the PR of China provided the necessary guarantees to the Portuguese State, for not having adopted the diplomatic protocol formula.

*

II.4.1. The appellant alleges that "*the extradition request expressly states that the request of the requesting State is directed to the continuation of the criminal action against the Appellant for the practice of the crime of obtaining funds by fraudulent means, committed from October 2013 to August 2018, punishable by article 192 of the Criminal Law of the People's Republic of China with a life sentence.*

If subject to trial, it will be possible that the Appellant will be charged with one or more crimes, of a different nature, and with more serious penal frameworks, not included in the request and which legitimize extradition. Consequence not admissible in the light of our legal system.

We cannot share the confidence of the Court a quo to legitimize the application of the provisions of article 6 with the guarantees provided by the diplomatic representation of the People's Republic of China.

Also because some verbal notes that are an integral part of the case file, n.º 27, has no formal validity, since it does not have the diplomatic protocol formula.

This raises serious doubts as to the subscription, respect and, above all, their link on the part of the People's Republic of China to the content they emanate.

There is a clear duty of care, as if non-compliance with the established rules is manifested from the outset with verbal notes, how will it be possible for Portugal to impose respect and regular compliance with the guarantees now provided ?» (Conclusions H to M).

*

II.4.2. Contrary to what the applicant claims, none of the notes is incomplete, not suffering from any imperfection or defect, or, at least, imperfection or defect that call into question their content or validity.

In terms of art. a) of art. 3 of the Convention on Diplomatic Relations, signed in Vienna on April 18, 1961, to which Portugal and the People's Republic of China are parties, the functions of diplomatic missions consist, in particular, of “representing the sending State before the sending State”, reason why any guarantees provided by the embassy of that country necessarily bind the Chinese State. However, since such binding is an instrument of international law, it also did not need to be expressly invoked in the notes produced by the Embassy of the People's Republic of China.

Nor are there any doubts as to the validity of the guarantee provided by the Chinese State that the appellant will not be sentenced to life imprisonment.

In fact, as can be seen from the Verbal Notes of 16 and 22 June 2021, the Government of the People's Republic of China guarantees, pursuant to article 50 of the domestic law on extradition of the People's Republic of China, based on a decision of the Supreme People's Court of the People's Republic of China that, in the event that AA is extradited from Portugal to China and convicted by a Chinese court for the facts for which the extradition was requested, the Trial Court will not sentence her to life imprisonment.

As there is no reason to question the validity of the guarantee of non-application of life imprisonment to the appellant, provided through a verbal note from the Embassy of the People's Republic of China, there is also no doubt that it is binding on the Chinese State. Indeed, pursuant to art. a) of article 3 of the Convention on Diplomatic Relations, signed in Vienna on 18 April 1961, to which Portugal and the People's Republic of China are parties, the functions of diplomatic missions consist, namely, in “representing the Accrediting State vis-a-vis the Accrediting State”, which is why any guarantees provided by the embassy of that country necessarily bind the Chinese State.

However, since such binding is an instrument of international law, it also did not need to be expressly invoked in the notes produced by the Embassy of the People's Republic of China.

As the contested decision clearly states:

«(...)In this case, we have as evidence that two Diplomatic Notes were issued, the first (no. that life imprisonment will not be applied, despite the expression used - "above" -, by itself without any meaning, since the guarantee states that it will not be applied); however, later, and on a date that was not recorded, it issued a new Diplomatic Note (No. 27), annexing the legal rule of the People's Republic of China on the basis of which the first Note issued was based. It should be noted that the contacts were established between the communication channels provided for in the Treaty on Extradition signed between Portugal and China, as provided for in its art. 6th.

The Embassy, in the person of its Ambassador (Chief of Mission), represents the respective State and, a fortiori, the Ministry of Foreign Affairs – art. 3rd, al. a), of the Convention on Diplomatic Relations, signed in Vienna on 18 April 1961, approved in Portugal by Decree-Law no.

Article 50 of the People's Republic of China Extradition Law, a law to which the courts of the People's Republic of China are naturally bound, states that "The Ministry of Foreign Affairs may, on behalf of the People's Republic of China, guarantee...", that "the guarantee with respect to the application of the penalty will be subject to the decision of the Supreme People's Court"; and further that "When investigating the criminal responsibility of the extradited person, the judicial bodies must be bound by the guarantee provided".

It is thus clear that in cases where the Ministry of Foreign Affairs of the People's Republic of China presents a guarantee to the third State that imposes additional conditions on extradition, the Chinese judicial bodies are bound by it. In fact, if such a guarantee is internally dependent on a previous decision of the Supreme People's Court of the People's Republic of China, it is not the Portuguese Republic, within the scope of bilateral diplomatic relations, that has to verify that it was issued and the respective regularity, rather resulting from the principle of good faith in force in international relations between sovereign states that the information transmitted through diplomatic channels corresponds to reality.

Thus, combining the aforementioned norms, it follows that the Head of State Mission in a third country, in this case the Ambassador (Article 14 of the Convention on Diplomatic Relations), can assume, on behalf of his Government, the official commitment not to come to sentence of life imprisonment may be applied - a commitment that, in the aforementioned terms, is binding on the judicial bodies of the respective country -, and it is not necessary that it proves that it is formally authorized either by the Ministry of Foreign Affairs or by the

Supreme People's Court - thus being unnecessary the communication of the provision of guarantee by the judicial body itself, contrary to what was alleged by the extradited person.

The guarantee stems from the complex of competences and powers that are recognized by the Diplomatic Missions, which carry out the activity of diplomatic representation of their country. In addition, the Diplomatic Missions issue Notes, which are known to be the means of communication par excellence between the accrediting State and the accrediting State. Thus, the Diplomatic Notes are valid for their content, they are binding on the State of the Mission that issues them, enjoying iuris tantum presumption as to their authenticity and veracity - which derives from the aforementioned principle of good faith and the principle of mutual trust, in force in the of international relations between sovereign states ().

In short, the sincerity of diplomatic commitment is assumed.

On the other hand, being mostly simple transmissions and resulting from verbal information, the Notes do not obey a strict formalism, it is enough that they mention who issues them and to whom they are addressed - being totally unnecessary for them to invoke the quality in which they are issued, the which stems from the very nature of the Diplomatic Mission in question. Thus, from the fact that it is not signed or dated, it is not possible to extract that Note no.

Thus, the People's Republic of China assumed the diplomatic commitment not to apply the sentence of life imprisonment to the extradited person, with the strong guarantees inherent to the assumption of behavior by a sovereign State towards another State.

The same was understood by the Portuguese Minister of Justice, who, in the order given under the provisions of art. 48, no. 2, of the LCJ, mentions the following: “Thus, according to the Verbal Notes of June 16 and 22, 2021, the Government of the People's Republic of China guarantees, under the terms of article 50 of the domestic extradition law of the People's Republic of China, based on the decision of the Supreme People's Court of the People's Republic of China that, in the event that AA is extradited from Portugal to China and convicted by a Chinese court for the facts for which the extradition was requested, the Court of judgment will not sentence her to life imprisonment” – condition for the admissibility of the defendant's extradition ».

We are therefore dealing with a formal declaration, the content of which must be assumed to be true and which, for all intents and purposes, corresponds to a solemn commitment that the Chinese State assumes vis-à-vis the Portuguese State, a commitment which, in terms of the elements transmitted, is in formal and substantial conditions to fulfill, and it is enough, as it was, for the Assistant Secretary of State and Justice to consider the appellant's extradition admissible.

For all the foregoing reasons, the applicant's claim is dismissed.

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II. 5. Regarding the validity of the guarantee provided by the Chinese State that the appellant will not be sentenced to life imprisonment

II.5.1. The appellant alleges that the crime imputed to her may, eventually, be punished with life imprisonment, a consequence that cannot be completely ruled out, given that there are unknown circumstances/elements, namely companies having a public or private nature, among others, may lead to the application of a different and more severe penalty from the guarantees now provided, not being proven, because the trial has not even started, there is only one accusation, under what title the facts are attributed to the appellant - if as the author, if as an accomplice and if she would be a mere employee; the Chinese authorities, instead of listing all the rules abstractly applicable to the case, chose article 192 of the Criminal Law of the People's Republic of China, whose criminal framework includes abstractly applicable life imprisonment, this despite, according to note n.º 24 and also in the information provided by the Ministry of Foreign Affairs, they consider that a sentence of more than 15 years will not be imposed; however, the applicant is strongly convinced that this communication is only intended to integrate the conditions for the admissibility of Extradition so that later, once the applicant is extradited, she will lose track of her and compliance with that criminal framework; thus, they did not take care to list all the more serious rules and facts, once in trial, that could be applied in the abstract to the case and therefore, by aggravating the measure of the penalty, they would prevent Extradition; in this regard, the violation of human rights, and the real possibility of being sentenced to life imprisonment by virtue of the weak guarantees provided by the Requesting State, must prove to be sufficient to fulfill the reason for refusal of extradition provided for in article 6 of Law no. 144/99, of 31 August, which did not happen here. Also in this sense, and under the Treaty between the Portuguese Republic and the People's Republic of China on Extradition, signed on 31 January 2007, the authorization of extradition, pure and simple, should have been rejected, in accordance with the provisions of article 3, which results in the refusal of extradition as an imperative, since the granting of extradition without the presentation of a guarantee is, in addition, an illegality, which was expressly invoked, and was not complied with, but not only, it substantiates the practice of an Unconstitutionality for violation of article 33.º n.º 4 of the CRP,*a quom* makes a wrong and incorrect interpretation of the rules listed here, which should have resulted in a diametrically different interpretation, grossly violating the provisions of article 6, al. a) and f) of Law n.º 144/99 and in article 33.º n.º 4 CRP. Contextualizing, also in the present case and object of this appeal, this principle of mutual trust does not exist because there is no solid and valid guarantee provided by the People's Republic of China, there is only a formalism in which the application of a prison sentence of 10/15 is expressed. years, without

knowing all the facts that could produce changes in the application of the sentence,

*

II.5.2. Referring to article 6, no. 1, al. a) of Law 144/99, of 31.08, for the need for the request for cooperation to satisfy and respect the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), under penalty of being refused, it is important to attend here to articles 3, 6 and 13 of this Convention and to the reservations that the Portuguese State made to articles 3 and 6.

the art. 3 of the ECHR, establishes that “ *No one may be subjected to torture or to inhuman or degrading treatment or punishment.* ».

the art. 6 of the same Convention establishes that every person has *the right to a fair trial* .

Following the jurisprudence of the European Court of Human Rights (ECtHR), DDD, clarifies that “ *a fair trial requires, as a natural element, that each of the parties has a reasonable possibility of defending its interests in a position not inferior to that of the opposing party, or, otherwise, the party must have the guarantee to present the case before the court under conditions that do not place it at a substantial disadvantage vis-à-vis its opponent .*” (Cf. “ *The European Convention on Human Rights* ”, 4th ed. From Coimbra publisher, page 165).

the art. 13 of the ECHR, entitled "Right to an effective remedy", provides that " *Any person whose rights and freedoms recognized in this Convention have been violated has the right to appeal before a national court, even when the violation has been committed by persons acting in the exercise of their official functions .* "

The reservations that Portugal made to the European Convention on Extradition were as follows:

« *Article 1.º: Portugal will not grant the extradition of persons:*

a) That they must be tried by a court of exception or serve a sentence decreed by such a court; b) When it is proved that they will be subjected to a process that does not offer legal guarantees of a criminal procedure that respects the conditions internationally recognized as indispensable to the safeguard of human rights, or that they will serve their sentence in inhumane conditions; c) When claimed for an infraction that corresponds to a penalty or security measure of a perpetual nature.

Article 2: Portugal will only admit extradition for a crime punishable by a custodial sentence of more than one year.

Article 6, no. 1: Portugal will not grant the extradition of Portuguese citizens.

Article 11: There is no extradition in Portugal for crimes that carry the death penalty under the law of the requesting State.

Article 21: Portugal only authorizes the transit in national territory of a person who is in the conditions in which his extradition can be granted .».

Regarding the possibility of the appellant being sentenced to an indefinite term of imprisonment, we will say that, although it is true that article 192 of the Penal Code of the People's Republic of China does not provide in its body a maximum limit for the duration of the prison sentence other than life imprisonment, establishing only the minimum limit of ten years in prison, that first limit must be taken from article 45 of the same legal diploma, which provides that, “*unless Unless articles 50 and 69 of the present Law establish otherwise, the term of a fixed-term prison sentence cannot be less than six months and not more than fifteen years*”, meaning that the appellant, if convicted of the facts on which the extradition request is based, will incur a prison sentence of between a minimum of ten years and a maximum of fifteen years.

Whilst it is true that the guarantee provided by the Chinese State does not mention the maximum limit of fifteen years for the prison sentence for which the applicant may be sentenced, it is equally true that it did not have to mention it, since such a limit does not result in of a condition accepted by the Chinese State, but of its own criminal law.

In this regard, it should be said, as the Honorable Magistrate of the M^oP^o rightly observes, that the Portuguese Penal Code itself contains a norm of the same content as the one mentioned above, namely, article 41.º, which, strictly speaking, would exempt that the norms relating to crimes punishable with prison sentences of up to twenty-five years in prison contain an express indication of this limit, since it is already imperatively established by the aforementioned regulation.

Thus, while it is true that the guarantee provided by the Chinese State does not mention the maximum limit of fifteen years for the prison sentence in which the appellant may be sentenced, it is no less certain that it did not have to mention it, since such limit does not results from a condition accepted by the Chinese State, but from its own criminal law.

It is important to recall the part of the reasoning of the contested judgment that dealt with the legal guarantees of the criminal procedure, the conditions for serving the sentence and the serious harm to the person being extradited, concluding clearly;

«(...) And as for the possibility of applying a PENALTY OF INDEFENSE DURATION, to which the reason for refusing extradition provided for in the same art. 6, no. 1, al. f), of the LCJ?

This is a penalty contrary to the constitutional principles in force in Portugal, and, therefore, an imperative ground for refusing extradition established in the Treaty on Extradition signed between Portugal and China, as well stated by both the extradited person and the Public Prosecutor's Office - art. 3, no. 1, al. h): "Extradition shall be refused if: the execution of the request would jeopardize the sovereignty, security, public order or other essential public interests of the requested Party or if it would be contrary to the fundamental principles of its domestic law".

Regarding this allegation by the extradited person, the Public Prosecutor's Office added to the file information on the subject provided by the Ministry of Foreign Affairs of the People's Republic of China (pages 168), stating that the maximum penalty to be applied to the extradited person will be 15 years in prison, in terms of art. 45 of the Penal Code of the same country. This rule, inserted in the section on "Detention for a determined time and life imprisonment" provides that "The duration of the prison sentence for a determined time cannot be less than 6 months nor more than 15 years, unless otherwise stipulated in Articles 50 and 69 of this law". (pages 167).

The incriminating norm (art. 192 of the Penal Code of the People's Republic of China) reads as follows: "An individual who, for the purpose of illegal possession, collects funds by fraudulent means, if the amount is relatively large, will be sentenced to a specified prison term of not exceeding five years or criminal detention and fined not less than 20,000 yuan, but not exceeding 20,000 yuan; if the amount is large or there are other serious circumstances, he shall be sentenced to imprisonment of not less than 5 years, but not more than 10 years, and fined not less than 50,000 yuan, but not more than 500,000 yuan; if the amount is particularly high or there are other particularly serious circumstances, he should be sentenced to more than 10 years imprisonment or life imprisonment, and cumulatively fined more than 50,000 yuan and less than 500,000 yuan."

In view of these rules, and according to information provided by the People's Republic of China - which must be regarded as corresponding to the reality in that country -, the extradited person cannot be sentenced to an indefinite prison sentence, the maximum prison sentence being shall be subject to 15 years' imprisonment. In fact, the legal type of crime itself does not even provide for the application of an indefinite prison term ».

In short, the Chinese State has provided a valid and unconditional guarantee that the applicant will not be " indicted for one or more crimes, of a different nature, and with more serious penal frameworks, not included in the request and which legitimize the extradition " and that the same will not be sentenced to life imprisonment, as a result of the combination of articles 192 and 45 of the Penal Code of the People's Republic of China that, if convicted for the facts on which the

extradition request was based, will incur a penalty imprisonment, the maximum limit of which may not exceed fifteen years.

Thus, it is also not right with regard to such segments of its arguments, not accepting its understanding that guarantees are not given that it will not be applied to the death penalty, life imprisonment or indefinite duration.

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II. 6. Regarding the disregard of all the Appellant's personal circumstances that may constitute a reason for refusing extradition, under article 18, paragraph 2 of Law No. 144/99, of 08.31. al. b) of the Extradition Treaty.

II.6.1. The applicant claims that the circumstances surrounding the applicant's extradition cannot in any way be disregarded. The appellant's extradition would indeed amount to the breaking of the family ties and the necessary reception of the children in an institution, since the appellant has resided in Portugal since August 2018 with her husband, BB, and is fully integrated in our country, from the social and familiar; the applicant, as proved, is a wife and mother, on whom her seriously ill husband with a degenerative pathology and their 3 children depend, 2 twins aged 3 years old and their eldest son, a frail 14 years old, with all the responsibilities that flow therefrom; the applicant's extradition involves exposing that family to an absolutely vulnerable and risky situation, violator in all its fullness of the right to private and family life, and of the provisions of article 8 of the ECHR; Articles 67 ("Family"), 69 ("Childhood") and 70 ("Youth"), enshrined in the Constitution of the Portuguese Republic (CRP) determine that the family "as a fundamental element of society" has the right to protection and "implementation of all the conditions that allow the personal fulfillment of its members"; the extradition intended to be imposed on the appellant by the Courta *quogrossly* contends with this principle as the appellant's uncertain and dramatic removal from her family, based on the serious uncertainty of her return, is in no way consistent with the basic principles of our rule of law; "the mother was the one who performed the functions of caregiver and, given the absence of a maternal figure, due to the fact that she was detained in the prison..., and given the difficulties of the parent in reconciling domestic routines with child care once Since these are two two-year-olds who require permanent adult attention, this EMAT has endeavored to integrate CC and DD children into school equipment." – if there were any doubts about the applicant's fundamental role and pillar within her family, all of them are dissolved with this social report prepared during his absence, and this circumstance alone made it necessary to hand over the minors to an institution; also the young son EE, teenager, "the young person is well integrated, being a committed student with good academic performance and exemplary behavior with the entire educational community, being as a whole a functional and balanced family, so it cannot be understood in a different from the profound

498/18.0YRLSB.S1, 5th Chamber, Rapporteur: Margarida Blasco (consultable at www.dgsi.pt), in the following terms:

«I - The jurisprudence of this STJ has been majority understanding, which does not fit as a reason for refusing extradition provided for in article 18, no. 2, of Law no. 144/99, of 08-31 and art. 4th, al. B), of the Treaty between the Portuguese Republic and the People's Republic of China on extradition. According to art. 3, of the LCJ, approved by Law no. 144/99, of 31-08 (and subsequent amendments): "The forms of cooperation referred to in art. 1 are governed by the rules of international treaties, conventions and agreements that bind the Portuguese State and, in their absence or insufficiency, by the provisions of this diploma." It should be noted that the extradition process has different purposes and purposes from the expulsion decision provided for in Law no. 135, no. 1, of Law no. 23/2007, of 04-07. "The forms of cooperation referred to in art. 1 are governed by the rules of international treaties, conventions and agreements that bind the Portuguese State and, in their absence or insufficiency, by the provisions of this diploma." It should be noted that the extradition process has different purposes and purposes from the expulsion decision provided for in Law no. 135, no. 1, of Law no. 23/2007, of 04-07. "The forms of cooperation referred to in art. 1 are governed by the rules of international treaties, conventions and agreements that bind the Portuguese State and, in their absence or insufficiency, by the provisions of this diploma." It should be noted that the extradition process has different purposes and purposes from the expulsion decision provided for in Law no. 135, no. 1, of Law no. 23/2007, of 04-07.

II - It is true that the union of the family is a fundamental right and that the delivery of the appellant implies a reduction or eventual break of the bond to the children, however, in view of the contours of the present case, we do not see that this circumstance can be considered as a sufficient, weighty and exceptional reason for the optional refusal to hand over the applicant to her country of origin. We understand that the interference with the Applicant's right to family life caused by the Extradition authorization appears to be justified and is not manifestly arbitrary or disproportionate, and, to that extent, does not violate any constitutional precept and/or art. 8 of the ECHR, there being no strong grounds for optional refusal under the terms of art. 18, no. 2, of the LCJ and art. 4th, al. b) of the Treaty'.

As can be seen from the quote above, it corresponds to the majority sense of the jurisprudence of the Supreme Court of Justice, which does not fit as a reason for refusing extradition provided for in article 18, no . *for other reasons of a personal nature*”, the fact that the person being extradited has a family (children) residing in our country. It has been decided that separation from the family is an “ *unavoidable* ” consequence of extradition (and, consequently, of the suspicion of committing a crime) and that it does not override the superior interest of international cooperation in the pursuit of the good administration of justice. .

Here are some examples of this understanding:

- STJ ruling of 1/11/2018, Proc. n.º 1331/17.6YRLSB.S1 - 3rd Section, Rapporteur: Manuel Augusto de Matos: “*VII - The removal of the applicant from his family by virtue of his extradition does not constitute - for the purposes of the provisions of art. 8 of the ECHR - serious injury or damage to the same, specifically of a higher degree than that which that cooperation measure normally implies. On the other hand, serious consequences resulting from other reasons of a personal nature cannot be considered those consequences that are the rule for those who have a family and will have to serve a prison sentence*” (Summaries of Judgments of the Supreme Court of Justice, Criminal Chambers, Annual Bulletin - 2018, pages 13 and 14).

*

- STJ ruling of 01-07-2016, Proc. No. 3/15.0YRLSB.S1 - 5th Section, Isabel Pais Martins: “*VII - It is unquestionable that the granting of the extradition request and the possible execution of the sentence in the Federative Republic of Brazil, within the scope of the process in which the request is formulated, implies a rupture in the life project of the person being extradited in Portugal, with costs in the personal and affective and professional level. But this consequence is the normal consequence of the "forced" removal from the national territory involved in extradition. VIII - The serious consequences that the granting of the request may imply for the person concerned claimed for the optional denial of international cooperation, under the terms of paragraph 2 of art. 18 of the aforementioned Convention, cannot be identified with those that are common to all cases in which the extradited came to establish their nucleus of personal and family life in the requested State, under penalty of a generalized refusal to cooperate, contrary to the ideals stated in the preamble to the Convention. IX - In view of the seriousness of the fact, reflected, namely, in the conviction, although not yet passed, for the practice of a crime of murder, it must be recognized that the consequences of extradition - removal of the person being extradited from the national territory, where he is family, socially and professionally inserted, with a break, at least physically, of the affective ties with the partner and the children - do not constitute an injury or damage of a higher degree than that which that form of cooperation, normally, by its very nature,*

implies (art. 18. °, n° 2 of the Convention).“(Summaries of Judgments of the Supreme Court of Justice, Criminal Sections, Annual Bulletin – 2016, pages 31, 32 and 33).

*

- STJ ruling of 08-08-2014, Proc. n° 364/14.9URLSB.S1 - 3rd Section, Rapporteur Raul Borges “*V - The appellant alleges a set of personal conditions, which, in his opinion, determine the denial of cooperation, pursuant to paragraph 2 of art. 18 of Law 144/99. However, in the present case, there are no consequences in terms of age (currently the appellant is 36 years old), of the defendant's health, and as mentioned in the judgment of 19-01-2012, delivered in Proc. 242/11.3YRCBR.S1 - 5th, serious consequences due to other personal reasons cannot be considered those consequences that are inherent to the extradition process, which are the rule for those who have a family and a job and will have to comply with a prison sentence*”(Summaries of Judgments of the Supreme Court of Justice, Criminal Chambers, Annual Bulletin – 2014, page 355).

*

- Judgment of 05-03-2012, Proc. n° 205/11.9GYRCBR.S2 - 5th Section, also by the Rapporteur Isabel Pais Martins: “*IV - No. 2 of art. 18 of Law 144/99, of 31-08, by providing for the possibility of denying the extradition request when it may have serious consequences for the person concerned, due to age, health status or other personal reasons, makes the optional denial of international cooperation dependent not only on the aforementioned personal consequences but also on a judgment of balance of interests between the criminal act and those consequences, a balance in which the confrontation between the seriousness of the act and the seriousness of the consequences of extradition for the person concerned. However, given the seriousness of the fact, reflected, namely, in the accusation for the practice of 2 crimes of drug trafficking,*” (Summaries of Judgments of the Supreme Court of Justice, Criminal Sections, Annual Bulletin – 2012, pages 295 and 296).

We understand, therefore, that the instability/family rupture caused by the applicant's Extradition to China is not sufficient reason for refusing extradition under the terms of article 6, al. f) of the LCJ and/or article 4, al. b), of the Treaty, insofar as the circumstance that motivates the family breakup was created by the Extradited Party (suspected of committing crimes in China, where she is a national) and is solely attributable to her.

If we understand that the constitution and/or increase of the family in Portugal, is a reason for refusal of Extradition, conditions would be created for the impunity of those who knowingly committed crimes (eg in the country of which they are nationals) and if they wanted to evade the action of justice.

And, as the Honorable Magistrate of the M^oP^o rightly points out, «*could one day reach a good port... in fact, any port at all! Thus, in a nutshell, refusing the appellant's extradition would, purely and simply, grant her impunity for the extremely serious crime she is suspected of having committed (...) the fulfillment of a prison sentence, but only for criminal proceedings, not knowing whether, in the end, she will be sentenced to an effective prison sentence, having necessarily to admit that she may even be acquitted or that, in case of conviction, is not in effective imprisonment or that is in prison sentence of less than ten years*».

For all the above, we understand that the interference with the applicant's right to family life caused by the Extradition authorization appears to be justified and is not manifestly arbitrary or disproportionate, and, to that extent, does not violate any constitutional precept and/ or article 8 of the ECHR, there being no strong grounds for optional refusal under the terms of article 18, no. 2 of the LCJ and article 4, al. b) of the Treaty.

Therefore, the appellant's allegation is unfounded in this part.

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II.7. As for the violation of the principle of equality provided for in article 13 of the CRP, for non-application of article 135, paragraph 1 of Law n.º 23/2007, of 4 July (Entry, , Departure and Removal of Foreigners from the National Territory).

II.7.1. In that regard, the appellant claims that the Court *a quod* did not pay enough attention to the provisions of article 135.º, no. 1 of Law no. 23/2007, of 4 July, which determines that foreign citizens who are effectively under Portuguese nationality residing in Portugal; the possible unequal treatment of these figures constitutes a gross and flagrant violation of the Principle of Equality, provided for in article 13 of the CRP. The different treatment of the above cases would result in an irrational and perfect inconsistency since, in practice, it would translate, by way of example, in the non-expulsion from national territory of a citizen who has committed a serious crime and, in the completely opposite sense, but, once again, in the light of the protection of the same interests underlying the two procedures, in the extradition of a citizen who has committed a minor crime in the State requesting extradition; having made a case-by-case analysis of the crime for which the appellant's extradition is sought, it is concluded that it is an economic crime and not a crime falling within the concept of serious criminality; thus, there is no doubt that the application of the extradition institute to the present case and its consequent authorization clearly violates the right to the family and the right of minors, to the protection of and in the family, enshrined in articles 36, no. 6 and 67 to 70 of the CRP, the constitutional principles of Equality and Dignity – articles 1 and 13, which guide our Rule of Law as well as the protection conferred by article 135 no. of Law no. 23/2007, of 4 July (conclusions

XX to AAA). having made a case-by-case analysis of the crime for which the appellant's extradition is sought, it is concluded that it is an economic crime and not a crime falling within the concept of serious criminality; thus, there is no doubt that the application of the extradition institute to the present case and its consequent authorization clearly violates the right to the family and the right of minors, to the protection of and in the family, enshrined in articles 36, no. 6 and 67 to 70 of the CRP, the constitutional principles of Equality and Dignity – articles 1 and 13, which guide our Rule of Law as well as the protection conferred by article 135 no. of Law no. 23/2007, of 4 July (conclusions XX to AAA). having made a case-by-case analysis of the crime for which the appellant's extradition is sought, it is concluded that it is an economic crime and not a crime falling within the concept of serious criminality; thus, there is no doubt that the application of the extradition institute to the present case and its consequent authorization clearly violates the right to the family and the right of minors, to the protection of and in the family, enshrined in articles 36, no. 6 and 67 to 70 of the CRP, the constitutional principles of Equality and Dignity - articles 1 and 13, which guide our Rule of Law as well as the protection conferred by article 135 no. of Law no. 23/2007, of 4 July (conclusions XX to AAA). it is concluded that this is an economic crime and not a crime within the concept of serious crime; thus, there is no doubt that the application of the extradition institute to the present case and its consequent authorization clearly violates the right to the family and the right of minors, to the protection of and in the family, enshrined in articles 36, no. 6 and 67 to 70 of the CRP, the constitutional principles of Equality and Dignity – articles 1 and 13, which guide our Rule of Law as well as the protection conferred by article 135 no. of Law no. 23/2007, of 4 July (conclusions XX to AAA). it is concluded that this is an economic crime and not a crime within the concept of serious crime; thus, there is no doubt that the application of the extradition institute to the present case and its consequent authorization clearly violates the right to the family and the right of minors, to the protection of and in the family, enshrined in articles 36, no. 6 and 67 to 70 of the CRP, the constitutional principles of Equality and Dignity – articles 1 and 13, which guide our Rule of Law as well as the protection conferred by article 135 no. of Law no. 23/2007, of 4 July (conclusions XX to AAA).

*

II.7.2. We will say, from now on, that the invocation of the provisions of article 135 of Law 23/2007, of 4 July, lacks any meaning, since this regulation applies only in relation to the expulsion from the national territory of those who are in a of the situations provided for by article 134 of the same law, which is clearly not the case with the appellant.

In fact, the purposes and purposes of the extradition process are different from the expulsion decision and, to that extent, the regime of article 135, paragraph 1 of Law no. , of 04.07 – in this sense, cf.

Judgment of the STJ of 11-16-2017, Proc. No. 1321/17.9YRLSB.S2 - 5th Section, Rapporteur: Carlos Almeida: “*III - The judgment or execution of any penalty imposed in Portugal could only be considered if the extradition were to be refused, for which there is no basis, and if this were required by the Federative Republic of Brazil (arts. 79 and 95 .º, no. 2, of Law 144/99, of 31-08), which is also not the case. The personal and family situation of the person being extradited is not relevant for this purpose, and a rule relating to the conditions for the expulsion of a foreigner in Portugal is inapplicable to a request for extradition*”.

Concluding that the purposes/purposes/interests are different in both processes (expulsion and extradition), it is not necessary to consider the issue of violation of the principle of equality called for by the applicant, insofar as the applicant's argument that if you were faced with two equal situations with unequal treatment.

As mentioned above, there is no violation of article 13 of the CRP, since the interference with the applicant's right to family life caused by the Extradition authorization appears to be justified and is not manifestly arbitrary or disproportionate, and, to that extent, it is not violating any constitutional precept and/or article 8 of the ECHR, there being no strong grounds for optional refusal under the terms of article 18, paragraph 2 of the LCJ and article 4, al. b) of the Treaty.

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II.8 – Violation of the In Dubio Pro Reo Principle.

II.8.1. The appellant alleges that *in casu*, and taking into account the position of the Court of Appeal ..., in view of the lack of protection of the *In Dubio Pro Reo* Principle, since the Court of the requested state confirms the disrespect for this sovereign principle, since, by suffice to with the Diplomatic Notes of a sentence of imprisonment for up to 15 years, without the trial having even started, he is also open to presupposing his guilt; *in dubio for reo* is thus understood in the sense that it is an imposition addressed to the Court, imposing favorable treatment on the defendant as long as the facts accused against him are not proven and the conviction becomes final. In the same way that, in case of doubt about the facts, the judge is bound by this same principle, having to always decide in favor of the defendant, which did not happen here – let us see in this sense article 32 no. 2 of the Portuguese Constitution; being also in this context, the judgment of the appealed learned Court wounded by legal and constitutional substance, manifesting itself in violation of the most basic guiding principles of our Rule of Law, due to its misinterpretation of the aforementioned norms, for which the appellant can only be found not guilty by the court *a quob* because in Portugal there is no condemnation or delimiting the prison sentence without prior judgment and, in this sense, the requirements for Extradition are not fulfilled (BBB to HHH conclusions).

*

II.8.2. The principle *in dubio pro reo* is a general principle, structuring the criminal procedure, resulting from the constitutional principle of the presumption of innocence of the accused.

As a fundamental principle in terms of the assessment and assessment of evidence, *“it can only be syndicated by the STJ within its limits of cognition, and must therefore result from the text of the contested decision in terms similar to those of the defects of art. 410.º, no. 2, of the CPP, and it only occurs when following the decision-making process evidenced through the motivation of the conviction, one arrives at the conclusion that the court, having remained in a state of doubt, decided against the accused, or when the conclusion drawn by the court in terms of evidence materializes in a decision against the defendant that is not sufficiently supported, so as not to leave irremovable doubts as to its meaning, by the evidence on which the conviction is based”* (cf. , of 01-27-2021, issued in Proc. No. 1663/16.0T9LSB.L1.S).

In the present case, the alleged breach of the principle in dubio pro reo makes no sense , when the appellant claims that, 'in view of the position of the Court of Appeal ..., in view of the lack of protection of the principle in dubio pro reo, since the Court of requested state corroborates the disrespect for this sovereign principle, since, by being sufficient with the Diplomatic Notes of a sentence of imprisonment for up to 15 years, without the trial having even started, it is also open to presuppose its guilt; in dubio pro reo is thus understood in the sense that it is an imposition addressed to the Court, imposing favorable treatment on the accused as long as the facts accused against him are not proven and the conviction becomes final”.

In fact, the contested decision authorized the extradition of AA to the People's Republic of China for the purposes of criminal proceedings for the crime of “fraudulent obtaining of funds”, provided for and punishable by article 192 of the Criminal Law of the People's Republic of China, duly substantiating the de facto decision in the documents on pages 6-54 and 55-79 (request for extradition, and respective translation, where the grounds for the same are stated) – facts proved in 1 and 3 to 5; in the documents on pages 80-81, as to proven facts nos. 6 to 8; in the document on pages 97-98, as to proven fact no. 2; in the documents on pages 198-201 and 55-70 of the attached file, regarding fact no. 9; in the document on pages 268-272 of the attached case, as to fact no. 12; in the document on pages 4-11, regarding fact no. 11; in the orders made in the attached case regarding the defendant's coercive measures – facts no. 11 and 13; in the medical report on pages 127 of the attached file, and clinical diary on pgs. 197 of the main proceedings – fact no. 10; in the social reports on pages 136-138, 178-184, information on pages 140-141 and 144-145, and order on pages 143 – facts no. 14, 15, 16, 17, 18, 19 and 20; in the documents on pages 85-93 (attached file), report on pages 183-184, document on pages 134

(this one in the attached case), regarding the fact proved on 21, also highlighting the testimony of witness LL, teacher at C..., on ..., insofar as the educational establishment is attended by the eldest son of the defendant, EE, since the academic year 2020/2021 and testimony of the witness MM, lawyer in the district ..., who mentioned that the defendant was presented to him in 2019, at ... , through an association to support Chinese emigrants, stating that the defendant had 2 houses, one in ... and one in ..., and that she was isolated in the city, only speaking English; that the defendant would also not have support in ...; that her husband is diabetic and has poor eyesight; and just contact the defendant by message, seeing her as a lonely person, without friends or support, with no one to leave her children to.

The reasoning of the decision in matters of fact shows an assessment and assessment of the evidence made in a rational, logical, plausible way and in harmony with the rules of common experience, so in no way can it be concluded that that same evidence generates uncertain facts. , or that the court was faced with any state of reasonable doubt about the factual evidence, capable of overturning the assessment made when authorizing the extradition of AA to the People's Republic of China.

In view of the foregoing, the judgment under appeal did not incur any violation of the principle of the presumption of innocence and/or the principle *in dubio pro reo* , all the more so, and as the contested decision rightly points out, the alleged facts relating to the alleged criminal activity of the requested - point IV of the opposition because«*It is not part of this process to determine whether or not the extradited person committed the facts imputed to her, since the extradition process does not aim at judging the facts that underlie the respective process. In fact, pursuant to art. 46, no. 3, of the LCJ, such evidentiary investigation is expressly prohibited; and, according to art. 55, no. 2, of the same LCJ, the opposition “can only be based on the fact that the detainee is not the person sought or on the fact that the extradition assumptions are not verified”, so the evidence and facts relevant to the decision of this process only on these assumptions they can respect - which was opportunely recorded in an order issued in the case, and which is reiterated*» . (TRL Act of 11.28.2019, proc. 499/18.9YRLSB-9, at www.dgsi.pt. Page 17 of 30).

*

III - Decision

In these terms and on the grounds set out above, the Judges of the Criminal Section of the Supreme Court of Justice agree to dismiss the appeal filed by the defendant AA and confirm the learned decision appealed from.

No costs (art.73, no. 1 of Law no. 144/99 of 31 - 8), without prejudice to the provisions of article 26, no. 2, subparagraph a) of the same diploma.

Lisbon, February 24, 2022

Cid Geraldo (Rapporteur)

Eduardo Loureiro (Deputy)