

克罗地亚最高法院及欧洲人权法院的裁定及核准书。

This translation consists of
3 pages / 7 sheets
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Date: February 24, 2022

CERTIFIED TRANSLATION
FROM THE CROATIAN LANGUAGE

SUPREME COURT DECISION



[coat of arms of the Republic of Croatia]
REPUBLIC OF CROATIA
SUPREME COURT OF THE REPUBLIC OF CROATIA
ZAGREB

Case number: II-8 Kr – 14/2021-6

[Official stamp of County Court in Zagreb: COUNTY COURT IN ZAGREB; Copies __ Attachments __; Nov 28, 2021; RECEIVED; Directly – by Mail; By registered mail __ 20__]

REPUBLIC OF CROATIA
DECISION

The Supreme Court of the Republic of Croatia, in council with the following members: judge Dražen Tripalo as president of council, and Vesna Vrbetić and Žarko Dundović as members of the council, with the participation of a Senior Court Counselor – Ivona Horvatić as record keeper, in the criminal case against suspect Sun Bocheng, for criminal acts from Articles 294 of the Criminal Act of the National Republic of China (hereinafter: CANRC) and thers, ruling in official capacity as per Article 55, paragraph 1 of the International Legal Aid in Criminal Matters Act ("Official Gazette" number 178/04 – hereinafter: ZOMPO), on the ruling of the County Court in Zagreb of October 15, 2021, case number Kv II-321/2021-9 (Kir-104/2021), in session held on December 22, 2021

has ruled as follows

The County Court in Zagreb decision made on October 15, 2021 number Kv II-321/2021-9 (Kir-104/2021) is upheld, whereby it was established that legal conditions for the extradition to the National Republic of China of suspect Sun Bocheng, for the purpose of prosecution for criminal acts from Articles 294, 292, 226, 303 and 293 of the Criminal Act of the National Republic of China have not been met. Therefore, the request of the Office for International Cooperation of the Ministry of Public Safety of the National Republic of China, of February 8, 2021 and of June 9, 2021, based on decision whereby the arrest is approved, of prosecution order of the National Procurator of Yongxiu County, number YJYBPB (2020)107 of July 10, 2020, for the extradition of foreign national Sun Bocheng from the Republic of Croatia to the National Republic of China for criminal prosecution is denied.

Explanation

1. With the first-level decision of the County Court in Zagreb, case number Kv II-321/2021-9 (Kir-104/2021) of October 15, 2021, based on Article 55, paragraph 1 of the ZOMPO, it was established that legal conditions for the extradition of foreign national Sun Bocheng (personal information as in denied Request) to the National Republic of China for criminal prosecution for the criminal act of organizing, leading and participating in a triad organization from Article 294 of the CANRC, the criminal act of inflicting intentional harm FROM Article 234 of the CANRC, criminal act of assembling people for the purposes of fighting from Article 292 of the CANRC, criminal act of coercing trade from Article 226 of the CANRC, criminal act of opening a casino from Article 303 of the CANRC, and criminal act of choosing and provoking disturbances from Article 293 of the CANRC, have not been met and, therefore, the request of Office for International Cooperation of the Ministry of Public Safety of the National Republic of China, dated February 8, 2021 and June 9, 2021, for the extradition of foreign national Sun Bocheng from the Republic of Croatia to National

Republic of China for the purposes of criminal prosecution, based on arrest decision of National Procurator of Yongxiu County, number YJYBPB (2020)107 dated July 10, 2020, is denied.

2. In a written assessment number KSM-DO-230/2021, dated December 15, 2021, the deputy Attorney General of the Republic of Croatia stated his opinion that the first-level court correctly ruled that legal conditions for extradition have not been met.

3. The decision is based on the law.

4. The first-level court has basis for its conclusion that legal conditions in this specific case have not been met for the extradition of extraditee Sun Bocheng to the National Republic of China for criminal prosecution for criminal acts stated in the decision of the first-level court because the Request is contradictory to Article 35, paragraph 1, lines 3, 4, and 7 of the ZOMPO.

5. Prior to analyzing in regards to particular criminal acts for which extradition was requested, it should be stressed that the conclusion of the first-level court is correct – that in regards to all the listed criminal acts, the basis for denial has been met because the National Republic of China has not given sufficient evidence that the extraditee has committed those criminal acts, even though additional documentation has been requested from them for this purpose.

5.1. Without the establishment of the basis for the suspicion of commitment of criminal acts, approving the extradition would violate the extraditees conventional right to a just trial.

6. In regards to the criminal act of organizing, leading or participating in the triad organization, from Article 294 of the CANRC, for which the first-level court established that, under our law, corresponds to a criminal organization from Article 328, paragraph 1 of the CA/11, the detailed analysis of the first-level court is accepted whereby, based on the given factual description (point 28 of the first-level decision), there exists a possibility of a death sentence in the National Republic of China, whereby rendering the extradition of the extraditee in conflict with Articles 2 and 3 of the European Convention for the protection of human rights and basic freedoms, as is correctly concluded by the first-level court, as has been ruled in similar cases in the past by the European Court for Human Rights.

7. Additionally, the first-level court has correctly concluded that, regarding criminal act from Article 292 of the Criminal Act of the National Republic of China, based on the local law, the statute of limitations has come into effect, as well as for certain criminal acts from Article 226 of the Criminal Act of the National Republic of China, as per the laws of the requesting country.

8. The criminal act from Article 303 of the Criminal Act of the National Republic of China, as described under point 1, opening a casino, isn't a criminal act based on local laws, so the first-level court's decision is correct to conclude that conditions from Article 35, paragraph 1, line 3 of the ZOMPO for the denial of the request.

9. Given all of the above, and taking into account the reasons of the first-level court's decision, the Supreme Court of the Republic of Croatia accepts said decision and concludes that legal conditions for the extradition of Sun Bocheng to the National Republic of China have not been met. Therefore, the request for extradition is denied, according to Article 55, paragraph 1 of the ZOMPO, and therefore, it is decided as stated.

3-

II-8 Kr 14/2021-6

Zagreb, December 22, 2021

Council President
Dražen Tripalo

CORRECTNESS OF DOCUMENT
Authorized Court Clerk
Archive Head
Mirko Paša
[signature illegible], [stamp]

I, *Ana Adum*, court interpreter for English, as appointed by the President of the County Court – Commercial Court in Zagreb Decree No. **4 Su – 1580/2018** of July 16, 2019. do hereby certify that the above translation is a faithful and complete translation of the original document written in the Croatian language.

Zagreb, February 24, 2022.
Certificate Nr.: 4/2 - 2022.





REPUBLIKA HRVATSKA
VRHOVNI SUD REPUBLIKE HRVATSKE
Z A G R E B

ŽUPANIJSKI SUD
U ZAGREBU

Primljena _____

28-12-2021

PRIMLJENO

Neposredno - Poštom
Preporučeno _____ 20__g.

Broj: II-8 Kr 14/2021-6

REPUBLIKA HRVATSKA RJEŠENJE

Vrhovni sud Republike Hrvatske u vijeću sastavljenom od sudaca Vrhovnog suda Dražena Tripala kao predsjednika vijeća te Vesne Vrbetić i Žarka Dundovića kao članova vijeća, uz sudjelovanje više sudske savjetnice Ivone Horvatić kao zapisničara, u kaznenom predmetu protiv izručenika Sun Bochenga, zbog kaznenih djela iz čl. 294. Kaznenog zakona Narodne Republike Kine i dr., odlučujući po službenoj dužnosti na temelju čl. 55. st. 1. Zakona o međunarodnoj pravnoj pomoći u kaznenim stvarima („Narodne novine“, broj 178/04, dalje: ZOMPO) o rješenju Županijskog suda u Zagrebu od 15. listopada 2021. broj Kv II-321/2021-9 (Kir-104/2021), u sjednici održanoj 22. prosinca 2021.,

riješio je:

Potvrđuje se rješenje Županijskog suda u Zagrebu od 15. listopada 2021. broj Kv II-321/2021-9 (Kir-104/2021) kojim je utvrđeno da nije udovoljeno zakonskim pretpostavkama za izručenje Narodnoj Republici Kini izručenika Sun Bochenga, radi vođenja kaznenog postupka zbog kaznenih djela čl. 294., čl. 292., čl. 226., čl. 303. i čl. 293. Kaznenog zakona Narodne Republike Kine te je odbijena zamolba Ureda za međunarodnu suradnju Ministarstva javne sigurnosti Narodne Republike Kine od 08. veljače 2021. i 9. lipnja 2021. za izručenje stranca Sun Bochenga iz Republike Hrvatske u Narodnu Republiku Kinu radi kaznenog progona na temelju odluke kojom se odobrava uhićenje, tjeratica Narodne prokuracije okruga Yongxiu, broj YJYBPB (2020)107 od 10. srpnja 2020.

Obrazloženje

1. Županijski sud u Zagrebu rješenjem od 15. listopada 2021. broj Kv II-321/2021-9 (Kir-104/2021) je na temelju čl. 55. st. 1. ZOMPO-a utvrdio da nije udovoljeno zakonskim pretpostavkama za izručenje Narodnoj Republici Kini stranca Sun Bochenga (osobni podaci kao u izreci pobijanog rješenja), radi vođenja kaznenog postupka, zbog postojanja osnovane sumnje da je počinio kazneno djelo zločina, organiziranja, vođenja ili sudjelovanja u organizaciji trijade iz čl. 294. Kaznenog zakona Narodne Republike Kine, kazneno djelo zločina okupljanja ljudi radi borbe iz čl. 292. Kaznenog zakona Narodne Republike Kine, kazneno djelo zločina prisilne trgovine iz čl. 226. Kaznenog zakona Narodne Republike Kine, kazneno djelo zločina otvaranja kasina iz čl. 303. Kaznenog zakona Narodne Republike Kine te kazneno

djelo zločina biranja i izazivanja poremećaja iz čl. 293. Kaznenog zakona Narodne Republike Kine, te je odbijena zamolba Ureda za međunarodnu suradnju Ministarstva javne sigurnosti Narodne Republike Kine od 8. veljače 2021. i 9. lipnja 2021. za izručenje stranca Sun Bochenga iz Republike Hrvatske u Narodnu Republiku Kinu radi kaznenog progona temeljem odluke kojom se odobrava uhićenje, tjeratica Narodne prokuracije okruga Yongxiu, broj YJYBPB (2020)107 od 10. srpnja 2020.

2. U pisanom podnesku od 15. prosinca 2021. broj KSM-DO-230/2021 zamjenik Glavne državne odvjetnice Republike Hrvatske je izrazio mišljenje da je prvostupanjski sud pravilno utvrdio da nije udovoljeno zakonskim pretpostavkama za izručenjem.

3. Rješenje je na zakonu osnovano.

4. Osnovano prvostupanjski sud zaključuje da u konkretnom slučaju nisu ispunjene zakonske pretpostavke za izručenje izručenika Sun Bochenga Narodnoj Republici Kini radi kaznenog progona zbog kaznenih djela navedenih u izreci prvostupanjskog rješenja jer je podnesena zamolba protivna odredbama čl. 35. st. 1. toč. 3., 4. i 7. ZOMPO-a.

5. Prije analize u odnosu na pojedina kaznena djela za koja je zatraženo izručenje potrebno je istaći da je pravilan zaključak prvostupanjskog suda da je u odnosu na sva navedena kaznena djela ispunjen razlog za odbijanje izručenja iz čl. 35. st. 1. toč. 7. ZOMPO-a jer Narodna Republika Kina nije dostavila dovoljno dokaza za postojanje osnovane sumnje da je izručenik počinio kaznena djela iako je u tom pogledu zatražena i dodatna dokumentacija.

5.1. Bez prethodno utvrđene osnovane sumnje dopuštanjem izručenja izručeniku bi bilo povrijeđeno konvencijsko pravo na pravično suđenje.

6. U odnosu na kazneno djelo zločina organiziranja, izvođenja ili sudjelovanja u organizaciji trijade iz čl. 294. Kaznenog zakona Narodne Republike Kine za koje prvostupanjski sud utvrđuje da po našem pravu odgovara kaznenom djelu zločinačkog udruženja iz čl. 328. st. 1. KZ/11 prihvaća se opširna analiza prvostupanjskog suda iz koje je utvrđeno da na temelju dostavljenog činjeničnog opisa (toč. 28. prvostupanjskog rješenja) postoji mogućnost izricanja smrtne kazne u Narodnoj Republici Kini pa bi izručenje izručenika bilo protivno čl. 2. i čl. 3. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda kako to osnovano zaključuje prvostupanjski sud, o čemu je istovjetne odluke donosio i Europski sud za ljudska prava.

7. Osim navedenog, osnovano prvostupanjski sud zaključuje da je u odnosu na kazneno djelo iz čl. 292. Kaznenog zakona Narodne Republike Kine po domaćem zakonu nastupila zastara kaznenog progona kao i za određene radnje kaznenog djela iz čl. 293. Kaznenog zakona Narodne Republike Kine, a za kazneno djelo iz čl. 226. Kaznenog zakona Narodne Republike Kine po zakonu države moliteljice.

8. Kazneno djelo iz čl. 303. Kaznenog zakona Narodne Republike Kine, onako kako je opisano u toč. 1., otvaranje kockarnice, nije po domaćem zakonu kazneno djelo pa stoga osnovano prvostupanjski sud utvrđuje da su ispunjeni uvjeti iz čl. 35. st. 1. toč. 3. ZOMPO-a za odbijanje izručenja.

9. S obzirom na sve navedeno te imajući u vidu razloge iz prvostupanjskog rješenja koje prihvaća i Vrhovni sud Republike Hrvatske, nije udovoljeno zakonskim pretpostavkama za izručenje Sun Bochenga Narodnoj Republici Kini pa je pravilno odbijena zamolba za izručenje, sukladno odredbi čl. 55. st. 1. ZOMPO-a, pa je stoga odlučeno kao u izreci.

Zagreb, 22. prosinca 2021.

Predsjednik vijeća:
Dražen Tripalo, v.r.

ZA TOČNOST OTPRAVKA
Ovlašteni službenik:
Voditelj Pisarnice za prijem i otpremu

Mirko Paša



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