

克罗地亚最高法院的释放决定书:

This translation consists of
2 pages / 6 sheets
Cert. Nr.: 2/2-2022
Date: February 22, 2022

CERTIFIED TRANSLATION
FROM THE CROATIAN LANGUAGE

COUNTY COURT DECISION



A handwritten signature in blue ink is written over a circular stamp. The stamp contains the text "STALIN SUDSKI TUMAČ ZA ENGLESKI JEZIK" and "AUTHORISED COURT INTERPRETER FOR ENGLISH". The signature is written in a cursive style.



[coat of arms of the Republic of Croatia]
REPUBLIC OF CROATIA
COUNTY COURT IN ZAGREB
Trg Nikole Šubića Zrinskog 5

Case number: 7 Kir – 104/2021

REPUBLIC OF CROATIA
DECISION

The County Court in Zagreb, per investigating judge, dr. sc. Oliver Mittermayer, with the participation of record keeper Dijana Žabčić, in the criminal case against foreign national Sun Bocheng, for the crime in Article 294 et al. of the Criminal Act of the National Republic of China, in the court proceedings regarding extradition, on the day December 29, 2021,

decided

I/ According to Article 48, Paragraph 1, as per Article 55 of the International Legal Aid in Criminal Matters Act (Official Gazette 178/2004 – hereinafter ZOMPO) the following:

incarceration for the purpose of extradition is annihilated

against foreign national Bocheng Sun (Jiming), born on January 19, 1973 in Nanchang, China, with residence in Nanchang, Nanchang bb, China, with Chinese passport number EB02876048, valid until November 8, 2027, arrested on January 18, 2021 at 13:00 hours.

II/ Foreign national Bocheng Sun (Jiming) is to be released from custody immediately.

Explanation

1. Police officials of the Krapinsko-Zagorska Police Station, Office of border police Macelj, arrested and brought foreign national Bocheng Sun in front of County Court investigating judge in Zagreb. Foreign national Haigen Huang was arrested based on an international arrest warrant issued by Interpol China for the perpetrating of criminal act "Criminal organization / union / group" from Article 294 et.al. of the Criminal Act of the National Republic of China which carries a minimal sentence of 20 (twenty) years, without a statute of limitations.

2. The arrest warrant was issued by the Office of Public Safety, Yongxiu China, number YG(X)BZ (2020)305041 on July 10, 2020.

3. After having been told of the reason for his requested extradition, he stated that he understood for which criminal act the extradition was being requested, but he used his legal right to defend himself with silence.

4. After having been informed of the conditions of this extradition and arrest, the process of simplified extradition, and his rights from Article 54, paragraph 1 and Article 40, paragraph 2 of the International Legal Aid in Criminal Matters Act, he stated that he understands what he is charged with and why he is arrested, and that in accordance with Article 52 of the International Legal Aid in Criminal Matters Act he doesn't agree to his extradition to China.

5. He was cautioned of the consequences of his stated disagreement, as per Article 40, paragraph 2 of the ZOMPO, and that he hasn't relinquished his right to special conditions, i.e., he has agreed to the requesting country to prosecute him for the criminal act for which extradition has been requested.

6. The defending attorney of the suspect, Mr. Nenad Marković, stated that his client owns and runs a company in Slovenia, of which he is the CEO, but is not formally employed by the company. Additionally, he resides in Slovenia, within the territory of the EU, and that this is a case of a politically motivated legal proceeding without any evidence. He objects to extradition incarceration, and suggests bail in the amount of 500,000 EUR in stead.

7. Given that the suspect is a foreign national, without a permanent residence or residence on the territory of the Republic of Croatia, and flight risk was determined, and given that the criminal act with which the accused is charged is a criminal act according to the laws of the Republic of Croatia as well, and for which there was no statute of limitations, and given that in the case of releasing the accused could obstruct the extradition process, the sentence of extradition incarceration was passed, due to the fact that legal conditions for incarceration of Article 47, paragraph 1 of ZOMPO were met.

8. The investigating judge was of the opinion that, given conditions of the criminal act and the existence flight risk, no amount of bail could be acceptable, regardless of the suggested amount.

9. The decision was passed on January 19, 2021, and the extradition incarceration started on January 18, 2021.

10. The Out-of-court Council of the County Court of Zagreb, passed the decision number Kv-II-321/2021-9 on October 15, 2021, whereby, based on Article 55, paragraph 1 of ZOMPO, and the fact that legal conditions for the extradition of a foreign national to the National Republic of China have not been met. The decision became legally binding on December 7, 2021 under case number Kv II-321/2021-9 (Kir-104/21), and as such was filed with the Supreme Court of the Republic of Croatia, at the Investigative Judges Department on December 29, 2021.

11. Given the above, the reason for incarceration of foreign national Sun Bocheng (Jiming) no longer exists, and he is, therefore, to be immediately released.

In Zagreb, December 29, 2021

[official stamp] [signature illegible]
Investigative Judge Oliver Mittermayer

Legal remedy:

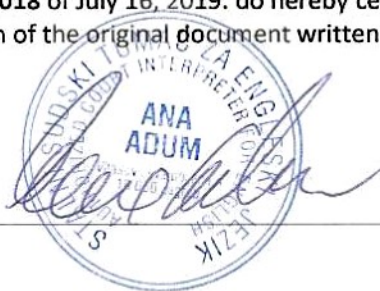
A dissatisfied party has the right to appeal this decision within two days of receiving the decision. An appeal is filed in triplicate and is decided upon by the Out-of-court Council of this Court. An appeal doesn't stop the execution of the decision.

DISTRIBUTION:

1. Foreign national Sun Bocheng – Prison in Zagreb
2. Defending attorney of foreign national Nenad Marković, attorney from Zagreb, post office box
3. Defending attorney of foreign national Ivan Sučić, attorney from Zagreb, post office box
4. Prison in Zagreb
5. Ministry of justice and management of the Republic of Croatia, with cover letter
6. Case archives

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 22, 2022.
Certificate Nr.: 2/2 - 2022.





REPUBLIKA HRVATSKA
ŽUPANIJSKI SUD U ZAGREBU
Trg Nikole Šubića Zrinskog 5

Poslovni broj: 7 Kir-104/2021

REPUBLIKA HRVATSKA
RJEŠENJE

Županijski sud u Zagrebu, po sucu istrage dr. sc. Oliveru Mittermayer uz sudjelovanje zapisničarke Dijane Žabčić, u kaznenom predmetu protiv stranca Suna Bochenga, zbog kaznenog djela iz članka 294 i dr. Kaznenog zakona Narodne Republike Kine, u postupku izručenja, dana 29. prosinca 2021. godine,

riješio je

I./ Prema članku 48 stavak 1 u vezi članka 55 Zakona o međunarodnoj pravnoj pomoći u kaznenim stvarima (NN 178/2004 – dalje u tekstu ZOMPO)

ukida se pritvor radi izručenja

protiv stranca Bocheng Sun (Jiming), rođen 19. siječnja 1973. godine u Nanchang, Kina, s mjestom prebivališta u Nanchang, Nanchang bb Kina, nositelj putne isprave Kine serijskog broja EB2876048 s rokom važenja do 8. studenog 2027. godine, uhićen 18. siječnja 2021. godine u 13,00 sati.

II./ Stranac Bocheng Sun (Jiming) ima se odmah pustiti na slobodu.

Obrazloženje

1. Policijski službenici Policijske uprave krapinsko zagorske, Postaja granične policije Macelj, bili su priveli sucu istrage Županijskog suda u Zagrebu stranca Suna Bochenga, uhićenog temeljem raspisane međunarodne potrage od strane Interpola Kine radi počinjenja kaznenog djela "Kriminalna organizacije / udruženja / grupa" iz članka 294 i dr. Kaznenog zakona Narodne Republike Kine za koje je predviđena maksimalna kazna zatvora od 20 (dvadeset) godina, bez zastare.

2. Nalog za lišenje slobode je izdao Ured javne sigurnosti, Yongxiu Kina, broj YG(X)BZ (2020)305041 od 10. srpnja 2020. godine.

3. Nakon što mu je priopćeno zašto se traži njegovo izručenje, izjavio je da je razumio zbog kojeg kaznenog djela se traži izručenje, ali je uzeo svoje zakonsko pravo i branio se šutnjom.

4. Upoznat sa pretpostavkama za izručenje i uhićenje, postupkom za pojednostavljeno izručenje i pravima iz čl. 54 st. 1 i čl. 40 st. 2 Zakona o međunarodnoj pravnoj pomoći u kaznenim stvarima, izjavio je da razumije što mu se stavlja na teret i zašto je uhićen, te u smislu članka 52 Zakona o međunarodnoj pravnoj pomoći u kaznenim stvarima izjavio je da ne pristaje na izručenje u Kinu.

5. Upozoren je na posljedice navedenog odricanja u smislu članka 40 stavak 2 ZOMPO-a te se nije odrekao prava specijaliteta, odnosno pristao je samo da ga država moliteljica može progoniti za kazneno djelo za koje je izručenje zatraženo.

6. Branitelj osumnjičenika odvjetnik Nenad Marković je naveo da njegov klijent ima tvrtku u Sloveniji kojoj je direktor, ali nije zaposlen u tvrtki. Uredno boravi na području Europske unije u Sloveniji, da se radi o politički montiranom procesu bez bilo kakvih dokaza. Protivi se određivanju ekstradicijskog pritvora, a suprotno da bi uplatio jamčevinu od 500.000 eura.

7. Budući stranac na području Republike Hrvatske nije imao prebivalište ni boravište i postojala je opasnost od njegovog bijega te je djelo koje se uhićeniku stavlja na teret kazneno djelo i po zakonu RH, a zastara nije nastupila, uhićenik je mogao u slučaju puštanja na slobodu ometati postupak izručenja, pa mu je bio određen ekstradicijski pritvor, jer su bili ispunjeni zakonski uvjeti iz članka 47 stavak 1 Zakona o međunarodnoj pravnoj pomoći za određivanje pritvora.

8. Sudac istrage je smatrao, a obzirom na okolnosti kaznenog djela, te da postoji opasnost od bijega, da se ne može prihvatiti jamčevina, bez obzira na predloženu visinu iznosa.

9. Rješenje je donijeto 19. siječnja 2021. godine, a ekstradicijski pritvor mu je tekao od 18. siječnja 2021. godina pa nadalje.

10. Izvanraspravno vijeće Županijskog suda u Zagrebu je dana 15. listopada 2021. godine broj Kv II-321/2021-9 utvrdilo na osnovu čl. 55 st. 1 ZOMPO-a da nije udovoljeno zakonskim pretpostavkama za izručenje stranca Narodnoj Republici Kini i to je rješenje postalo pravomoćno 7. prosinca 2021. godine te je rješenje dostavljeno na odluku Vrhovnom sudu Republike Hrvatske, koji je 22. prosinca 2021. godine potvrdio rješenje Županijskog suda u Zagrebu od 15. listopada 2021. godine broj Kv II-321/2021-9 (Kir-104/21), a koje rješenje Vrhovnog suda RH je zaprimljeno u Odjel sudaca istrage 29. prosinca 2021. godine.

11. Samim time više nema razloga za pritvorom radi izručenja stranca Suna Bochenga (Jiming), te se isti ima odmah pustiti na slobodu.

U Zagrebu, 29. prosinca 2021. godine



Pravna pouka:

Protiv ovog rješenja nezadovoljna stranka ima pravo žalbe u roku od dva dana po primitku istog. Žalba se podnosi u tri istovjetna primjerka, a o njoj odlučuje izvanraspravno vijeće ovoga suda. Žalba ne zadržava izvršenje rješenja.

DNA:

1. Stranac Sun Bocheng - Zatvor u Zagrebu
2. Branitelj stranca Nenad Marković, odvjetnik iz Zagreba, pretinac
3. Branitelj stranca Ivan Sučić, odvjetnik iz Zagreba, pretinac
4. Zatvor u Zagrebu
5. Ministarstvo pravosuđa i uprave RH, uz dopis
6. U spis

TUMAC 20
MAY 19 1900

Wm

