

中院判决书英文版原件:

This translation consists of  
8 pages / 15 sheets  
Cert. Nr.: 7/12-2022  
Date: January 13, 2023

CERTIFIED TRANSLATION  
FROM THE CROATIAN LANGUAGE

COUNTY COURT DECISION



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

Case number: 14 Kv II-321/2021-9  
Kir-104/2021

REPUBLIC OF CROATIA  
DECISION

The County Court in Zagreb, per Council consisting of judges of this Court, Lidija Vidjak as Council president, Dušanka Zastavniković Duplančić and Sonja Brešković Balent as Council members, with the participation of Higher Court Advisor-Specialist Ana Matić-Puljar as record keeper, in the case of extradition of foreign national Sun Bocheng, for the crimes stated in Article 294 et al. of the Criminal Act of the National Republic of China, as per the request of the Office for International Cooperation of the Ministry of Public Security of the National Republic of China of February 8, 2021 and June 9, 2021, for the extradition of foreign national Sun Bocheng from the Republic of Croatia to the National Republic of China for the purpose of criminal prosecution, at the Council session held on October 15, 2021,

issued the following ruling

Based on Article 55, Paragraph 1 of the International Legal Aid in Criminal Proceedings Act (Official Gazette 178/04, hereinafter ZOMPO), it is determined that the legal prerequisites have not been met for the extradition to the National Republic of China of foreign national

Bocheng Sun (Jiming), born on January 19, 1973 in Nanchang, Jiangxi province, National Republic of China, with residence in the city of Nanchang, Jiangxi province, Yuzhang Road 52, citizen of the National Republic of China, carrier of passport of the National Republic of China number EB02876048, valid until November 8, 2027.

For the purpose of criminal prosecution on the basis of substantiated suspicion that he committed the criminal act of organizing, leading or participating in the triad organization from Article 294 of the Criminal Act of the National Republic of China, the criminal act of assembling persons for the purpose of fighting from Article 292 of the Criminal Act of the National Republic of China, the criminal act of forced trade from Article 226 of the Criminal Act of the National Republic of China, and the criminal act of opening casinos from Article 303 of the Criminal Act of the National Republic of China, and the criminal act of choosing and initiating conflict from Article 293 of the Criminal Act of the National Republic of China

Additionally, the requests of the Office for International Cooperation of the Ministry of Public Security of the National Republic of China of February 8, 2021 and of June 9, 2021, for the extradition of foreign national Sun Bocheng from the Republic of Croatia to the National Republic of China, for the purpose of criminal prosecution, is denied, based on the Decision whereby the arrest warrant of the National procurator county of Yongxiu number YJYBPB (2020) dated July 10, 2020, was approved.

Explanation

1. The Investigating judge of the County Court in Zagreb submitted the case under investigation of the extradition of extraditee Sun Bocheng to the National Republic of China for the purpose of criminal prosecution for criminal acts of organizing, leading or participating in the triad from Article 294 of the Criminal Act of the National Republic of China (hereinafter: KZNRK), assembly of persons for the purpose of fighting from Article 292 of the KZNRK and opening casinos from Article 303 of the KZNRK, and the criminal act of choosing and initiating conflict from Article 293 of the KZNRK, to this Council, on March 1, 2021, for the purpose of obtaining a ruling, pursuant to the request of the Office for International Cooperation of the Ministry of Public Security of the National Republic of China of February 8, 2021. (Sheets 275-291 of the case files)

2. The extraditee is currently in extradition incarceration sentenced by the Investigative Judge's decision number Kir-104/2021 of January 19, 2021 (Sheet 24), of which the final ruling was rendered on February 1, 2021

3. Having been questioned by the Investigative Judge on January 19, 2021, in accord with the provisions of Article 52 of the ZOMPO, the extraditee stated that he understood the reasons for his arrest and what he was charged with, as well as that he was familiar with the prerequisites for his extradition and arrest, with the process for simplified extradition and his rights from Article 54, Paragraph 1 and Article 40, Paragraph 2 of the ZOMPO. He explicitly stated that he opposes the extradition to the National Republic of China.

4. Taking into consideration the deficiencies of the submitted the request of the Office for International Cooperation of the Ministry of Public Security of the National Republic of China of February 8, 2021, this Council, represented by the Investigating Judge, has submitted a request on April 19, 2021 (Sheets 597-598), whereby requesting that the extradition request be submitted in accord with Article 43 of the ZOMPO, with valid translation into the Croatian language, pursuant to which a request of the Office for International Cooperation of the Ministry of Public Security of the National Republic of China dated June 9, 2021, was submitted to the case file (hereinafter: the Request) for the extradition of foreign national Sun Bocheng from the Republic of Croatia to the National Republic of China for the purpose of criminal prosecution (Sheets 637-664)

5. After having conducted the processes of establishing whether the extradition prerequisites have been met, this Council has determined that the prerequisites for complying to the Request have not been met, as proscribed by provisions of Article 35, Paragraph 1, line 7 of the ZOMPO, in regards to all the criminal acts for which the extradition was requested, i.e., that the conditions of Article 35 Paragraph 1, line 3 of the ZOMPO in regards to the criminal act of opening casinos from Article 303 of the KZNRK, and conditions of Article 35 Paragraph 1, line 4 of the ZOMPO in regards to the criminal act of assembly of persons for the purpose of fighting from Article 292 of the KZNRK and the criminal act of choosing and initiating conflict from Article 293 of the KZNRK, have been met, therefore making it necessary to rule that the legal prerequisites of extradition of foreign national Haigen Huang for the purposes of criminal prosecution for previously stated criminal acts, have not been met.

6. Provisions of Article 35 of the ZOMPO state that extradition will not be allowed in the following cases:

1. if the person the extradition of whom is requested is a citizen of the Republic of Croatia
2. if the criminal act for which the extradition is requested is committed on the territory of the Republic of Croatia, against the Republic of Croatia, or its citizens
3. if the act for which the extradition is requested is not a criminal act both according to the local legislation as well as the legislation of the country in which it was committed
4. if, according to local legislation, the statute of limitations for prosecution or for the serving of the sentence has occurred, prior to the incarceration or questioning of the accused
5. if the foreign national, the extradition of whom is requested, has already been pronounced guilty from the local court by a final verdict, or if he has already been pronounced innocent by a final court ruling, unless the conditions of a repeated court criminal proceedings are met as proscribed by the Criminal Act, or if criminal proceedings have been initiated against the foreign national for the same criminal acts committed against the Republic of Croatia, and if criminal court proceedings have been initiated for criminal acts committed against a citizen of the Republic of Croatia – if collateral has not been deposited to cover damages of a claimant
6. if the identity of the person, the extradition of whom is requested, is not established
7. if there is insufficient evidence for a substantiated claim that the foreign national, the extradition of whom is being requested, has committed a certain criminal act or that there exists a final ruling

7. Having investigated the basis for complying with the submitted Request, this Council has determined that extradition prerequisites set in Article 35, Paragraph 1, Lines 3, 4 and 7 of the ZOMPO have not been met.

8. The extradition of foreign national Sun Bocheng to the National Republic of China for the purpose of criminal prosecution for criminal acts of organizing, leading or participating in the triad from Article 294 of the KZNRK, assembly of persons for the purpose of fighting from Article 292 of the KZNRK and opening casinos from Article 303 of the KZNRK, and the criminal act of choosing and initiating conflict from Article 293 of the KZNRK

Criminal acts of organizing, leading or participating in the triad from Article 294 of the KZNRK

9. In regards to the criminal acts of organizing, leading or participating in the triad from Article 294 of the KZNRK stated in the Request, it is clear that the criminal act was committed in the period from April 1994 to May 2020 in such a way that Sun Bocheng cooperated with Sun Yingliang to organize and lead dozens of members in order to establish the triad organization in counties Donghu, Xihu and Honggutan, the city of Nanchang and the province of Jiangxi. Sun Bocheng played a role in decision making, commanding, coordination and management of the forming, development and activities of the entire organization and all its activities, whereby he directed members of the criminal organization to use violence, threats and other means to conduct illegal and criminal activities, such as assembling masses, extortion of transactions, opening casinos and causing distress and reaped economic gain from such activities. For the said criminal act, the Article 294 of the KZNRK is applied, whereby proscribing that those that organize and lead triad organizations will be sentenced to incarceration in duration of at least 7 years, with the seizure of all their assets. However, based on Article 45 of the KZNRK, a prison sentence can't be longer than 15 years, with the exception of provisions of Articles 50 and 69 of the KZNRK.

10. According to the legal description of the described criminal act from Article 294 of the KZNRK, the criminal act complies with the criminal act of a criminal enterprise from Article 328, Paragraph 1 of the KZ/11, whereby it is stated that persons organizing or leading a criminal enterprise will be sentenced to incarceration for a period between 6 months to 5 years. The stipulation from Article 81, Paragraph 1 of the KZ/11 proscribes that the statute of limitations is triggered after 15 years for criminal acts that are punishable with incarceration longer than 3 years. Furthermore, the foreign national is charged with committing the criminal act in the period from April 1994 until May 2020, while the Interpol arrest warrant and request (Sheet 275 and 652 of the case files) state that Sun Bocheng is in flight from November 15, 2018. Therefore, it is the assessment of this Council that the factual description of the committed criminal act is imprecise and unclear, and the exact time of the trigger of the statute of limitations as per local legislation, therefore, cannot be established.

11. Furthermore, for the a/m criminal act, the request provides no evidence to enable this Council to assess the suspicion whether the extraditee Sun Bocheng committed this criminal act, so therefore the conditions of Article 35, Paragraph 1, Point 7 of the ZOPMPO have been met.

Criminal act of assembly of persons for the purpose of fighting from Article 292 of the KZNRK

12. In regards to committing the criminal act of assembly of persons for the purpose of fighting from Article 292 of the KZNRK, the Request states that the leader of the criminal enterprise, Sun Bocheng, did on the date April 17, 1997, instruct a member of his criminal enterprise, Ye Jianhu, to go to the vicinity of road Chuanshan, while carrying a firearm, county Xihu, city of Nanchang, province Jiangxi and coordinate with Sun Jinliang. A member of the criminal organization, Huang Haigen and another criminal enterprise Zou Chunhui and others were in an altercation and were firing firearms at each other, thus injuring numerous pedestrians, including Qin Yonghong, whose sustained injuries were classified as minor injuries in the second degree. For the mentioned criminal act, the Article 292 of the KZNRK is applicable, which proscribes that who gathers a multitude for the purpose of engaging in combat will be sentenced with incarceration, with a prison sentence or surveillance in the duration of a maximum of three years, while active participants will be sentenced to incarceration in the duration of at least three, and at most 10 years.

13. Based on the legal description of the criminal act described in Article 292 of the KZNRK, the criminal act corresponds to the act of participating in an altercation from Article 122, Paragraph 2 of the KZ/11, which stipulates that who organizes or leads a group of three or more persons that participate in an altercation or assault from Paragraph 1 of this Article, or who organizes such an altercation or assault, will be sentenced with incarceration for a period between one and eight years. The stipulation of Article 81, Paragraph 1 of the KZ/11, states that the statute of limitations is triggered after 20 years for criminal acts that are punishable with incarceration longer than 5 years. Therefore, for the criminal act from Article 292 of the KZNRK, the statute of limitations has been triggered, according to local legislation, on April 17, 2017. Therefore, the condition from Article 35, Paragraph 1, point 4 of the ZOMPO has been met.

14. Furthermore, the request provides no evidence for the commitment of this criminal act, that would allow this Council to assess the validity of the suspicion that precisely Sun Bocheng committed this criminal act. Therefore, the condition from Article 35, Paragraph 1, point 7 of the ZOMPO has been met.

The criminal act of forced trade from Article 226 of the KZNRK

15. In regards to committing the criminal act of forced trade from Article 226 of the KZNRK, the Request states that, from March 2003 til November 2006, the accused Sun Bocheng monopolized the right to work with water products at the vegetable market Dunzitang in the county Donghu in the city of Nanchang, in such a way that he led the members of his criminal enterprise, Xiong Shiming and others, using threats, intimidation and other methods, in order to force Zhao Xiuhu and other water product salesmen for repeated distribution. Using mentioned methods, Sun Bocheng and others made an illegal profit of more than 3 million yuan. The mentioned criminal act is subject to Article 226 of the KZNRK, which proscribes a sentence of incarceration up to 3 years or the sentence of limited freedom of movement, together with a monetary fine, and if the circumstances are particularly serious, then a sentence of at least 3 years, but no more than 7 years of incarceration and a monetary fine.

16. Based on the legal description from Article 226 of the KZNRK, the criminal act corresponds to the criminal act of extortion from Article 243, Paragraph 2 of the KZ/11, which proscribes that he who, with the goal of generating illegal monetary benefits, for himself or others, uses force and serious threats to others to do or not to do something, or to sustain damages to their own detriment or the detriment of others, while generating considerable damage, the perpetrator of such criminal acts will be punished with incarceration in duration of 1 to eight years. Article 81, Paragraph 1 of the KZ/11 proscribes that the statute of limitations for criminal prosecution is triggered upon the passage of 20 years for criminal acts punishable with more than 5 years of incarceration. Therefore, for the criminal act from Article 226 of the KZNRK, the statute of limitations is triggered, according to local legislation, in November 2026, but according to the legislation of the country where the act occurred, the statute of limitations for said criminal act was triggered in November 2016, based on Article 87, Paragraph 2 of the KZNRK.

17. Furthermore, the Request provides no evidence for said criminal act, that would allow this Council to assess the validity of the suspicion that it was Sun Bocheng that committed it. Therefore, the conditions of Article 35, Paragraph 1, point 7 of the ZOMPO have been met.

The criminal act of opening casinos from Article 303 of the KZNRK

18. In regards to the criminal act of opening a casino, from Article 303 of the KZNRK, the Request, listed under point 1, states that Sun Bocheng, in the period from June 2009, until October 2013, together with other members of his criminal enterprise, Hu Chuangxin and others, successively set up more than 50 gambling machines in the city of Nanchang, the province Jiangxi, the county Donghu, in order to enable others to gamble. Sun Bocheng was responsible for the operations and management of a gambling establishment and reaped profits from it, and the casino generated more than 5 million yuan in illegal gains. Furthermore, under point 2, it was stated that, in October 2016, the suspect Sun Bocheng and Yang Qiang, a member of the criminal enterprise, secured the equipment for gambling, such as Pai Gowa

and poker in the guest room of hotel Gloria Plaza in the city of Nanchang in the province Jiangxi and organized many gambling participants. Sun Bocheng generated a total of more than 2 million yuan in illegal gains. The Article 303 of the KZNRK proscribes a sentence of up to 3 years in prison, the sentence of detainment or surveillance, with a monetary fine, and in more egregious circumstances, no less than 5 and no more than 10 years in prison.

19. The factual description of the criminal act stated under point 1, states that Sun Bocheng, in cooperation with other members of his criminal enterprise, placed more than 50 gambling machines, was responsible for the operations and management of the casino, and that he profited from said acts. However, since the opening of casinos is a legal enterprise in the Republic of Croatia, it does not constitute a criminal act per local legislation. The factual description of the criminal act as described in the Request doesn't have a corresponding criminal act in KZ/11, so therefore, in regards to the criminal act of opening a casino per Article 303 of the KZNRK, as described under point 1, the legal prerequisite of Article 35, Paragraph 1, point 3 of the ZOMPO, has been met.

20. Furthermore, in regards the factual description of the criminal act under point 2, it is stated that Sun Bocheng and members of the criminal enterprise secured the gambling equipment such as Pai Gowa and poker in the guest room of the hotel Gloria Plaza in the city of Nanchang in the province Jiangxi and organized a number of participants in the gambling process. Sun Bocheng gained more than 2 million yuan in illegal gains. Based on said legal description from Article 303 of the KZNRK, the criminal act would correspond to the criminal act of illicit chance games from Article 237 of the KZ/11, which proscribes that, he who obtains material gain for himself or others, without obtaining prior approval of authorities, by organizing, running or promoting chance games, will be sentenced with incarceration of 3 years, and if the criminal act results in substantial financial gain, the perpetrator will be sentenced with incarceration of one to eight years. Article 81, Paragraph 1 of the KZ/11 proscribes that the statute of limitations is triggered after the lapse of 20 years for criminal acts punishable with incarceration longer than 5 years. Therefore, the statute of limitations for the said criminal act will be triggered in November 2035, according to local legislation.

21. Furthermore, the Request provides no evidence for said criminal act, that would allow this Council to assess the validity of the suspicion that it was Sun Bocheng that committed it. Therefore, the conditions of Article 35, Paragraph 1, point 7 of the ZOMPO have been met.

#### The criminal act of choosing and initiating conflict from Article 293 of the KZNRK

22. In regards to the criminal act of choosing and initiating conflict from Article 293 of the KZNRK, the Request states under point 1 that, on the date November 27, 2003, the suspect Sun Bocheng sent several members of his criminal enterprise, that were holding firearms, machetes, axes and other tools. Those members rushed into the provincial people's hospital Jianxi, in order to inflict revenge on Tu Wen. Innocent people, such as Chen Jiping, Ouyang Xianoyong and others, were, in the process, beaten and hurt with knives, axes, and most of the injuries sustained were minor injuries. Furthermore, under point 2 it states that, in July 2004, Sun Bocheng mediated in a conflict between members of his own and a rival criminal enterprise, and after a suggested meeting was declined, accused Xiong Shiming that he was persecuting Li Yueming with machetes, axes and other tools. He sustained minor injuries. Further, under point 3, on the day December 8, 2010, the suspect Sun Bocheng gathered the members of his criminal enterprise in order to rush to the vicinity of road Minda in Nanchang, province Jianxi, then attacked the driver Zhu Xinliang and Zhu Yongquan, who both sustained minor injuries. In the first half of 2012, under point 4, it is described how suspect Sun Bocheng, together with other members of his criminal organization, lent to gamblers Tao Hongbiao and Xie Jun the casino, valued at 2 million Hong Kong dollars, and it was agreed that the money would be returned after the return to Nanchang, otherwise interest rates would be charged at the yearly rate of 36%, but in the end the loan wasn't repaid and they were forced to pay back more than 2 million yuan, after many threats and much harassment. Under point 5, the Request states that in January 2014, Sun Bocheng, together with other members of his criminal enterprise, lent the gambling code to the gambler He Zhiqiang valued at 12 million Hong Kong dollars and it was agreed that He Ziqiang would return the loan upon his return to Nanchang, otherwise the yearly interest rate charged would be 36%, however, the loan was never returned, and after a lot of threats and harassment, he was forced to repay more than 15 million yuan of principal and interest.

Furthermore, under point 6, the Request states that, in October 2014, the suspect Sun Bocheng and other members of his criminal enterprise, gave Gong Chaoyang 6 million yuan on loan, with a yearly interest rate of 36%, the term of the loan was one month, and the interest rate was charged on a yearly rate of 72%, if not paid until due date, so in the end Gong Chaoyang were forced to pay 10 million yuan. Finally, under point 7, the Request states that, in May 2015, Sun Bocheng induced the members of his criminal enterprise to rush to beat, intimidate and threaten a few tenants, Nie Yuping sustained minor injuries. The mentioned criminal act is subject to Article 293 of the KZNRK, which proscribes incarceration of maximum five years., detainment or surveillance, and anyone who more than once assembles others to commit such criminal acts and seriously endanger the social order, will be punished with incarceration of no less than 5, and no more than 10 years, and can also be sentenced with a financial fine.

23. From the factual description of the criminal acts under points 1, 2, 3 and 7, it is clear that Sun Bocheng organized the intimidation and assault on members of another criminal enterprise, which resulted in minor bodily injuries. Such a factual description of criminal acts from Article 293 of the KZNRK, this criminal act corresponds, in its salient points, to the criminal act from Article 117, Paragraph 1 of the KZ/11, which proscribes that anyone that inflicts bodily harm on someone or damages their health, will be sentenced with incarceration up to 1 year, i.e., it corresponds to the criminal act of threatening someone from Article 139, Paragraph 2 that proscribes that anyone who seriously threatens another person with weapons, will be sentenced with incarceration of up to 3 years. Article 81, Paragraph 1 of the KZ/11 proscribes that the statute of limitations of criminal prosecution is triggered after 10 years for criminal acts for which a sentence of incarceration longer than 1 year. Therefore, for the criminal act of threatening another person, pursuant to the local legislation, the statute of limitation is triggered for the act stated under 1 on November 27, 2013, for act under 2 on July 2014, for act under 3 on December 8, 2020, and for act stated under 7 in May 2025. Therefore, the first three a/m acts are already under the statute of limitations under the local legislation, for criminal prosecution, i.e. the condition of the stipulation of Article 35, Paragraph 1, point 4 of the ZOMPO, has been met.

24. Furthermore, in regards to the factual description of criminal acts from points 4, 5 and 6, it is clear that Sun Bocheng, together with other members of his criminal enterprise, gave out a loan that was in the end repaid after threats and harassment. Given that factual description of the criminal act from Article 293 of the KZNRK, the criminal act corresponds, in its salient points, to the criminal act of illegal collections from Article 323 of the KZ/11, which proscribes that if a person uses force or serious threats to collect a claim that the other person owes them or owes a second person, will be punished with incarceration of 6 months to 5 years, and if the criminal act perpetrator has used force or threatened to endanger the life or attack the body of the debtor or another person, the perpetrator will be punished with incarceration of 1 to 8 years. Stipulations of Article 81, Paragraph 1 of the KZ/11 are that the statute of limitations for criminal prosecution is triggered after 20 years lapse for criminal acts for which a sentence of incarceration of more than 5 years may be carried. Therefore, the statute of limitations for criminal prosecution for the criminal act of illegal collections, as per local legislation is triggered for acts under point 4 in the first half of 2023, for the act listed under point 5 in January 2034, and for the act under point 6 in October 2034.

25. Furthermore, the Request provides no evidence for said criminal act, that would allow this Council to assess the validity of the suspicion that it was Sun Bocheng that committed it. Therefore, the conditions of Article 35, Paragraph 1, point 7 of the ZOMPO have been met.

26. Furthermore, having assessed the entire documentation, it is the assessment of this Council that, in regards to all the criminal acts for which extradition is requested, sufficient evidence was not provided for the substantiated claim that the foreign national Sun Bocheng committed any of the particular criminal acts stated. Namely, the Request dated February 8, 2021 states as evidence the statements of witnesses Tu Shenggen, Zhang Pingying (Sheets 280-281 of the case file), however, the interpretation of those statements is unclear and incomplete, those witness statements are neither given in their full content in the form of meeting minutes, which wasn't corrected in the additional request sent on June 9, 2021. Therefore, the Request states (Sheet 276 of the case file) that evidence and injury assessments were gathered, that identification transcripts and on-the-scene inspection transcripts were gathered audio-visual material was gathered, but the country requesting the extradition did not supply the a/m evidence in order to allow this Council to assess whether the suspicions that Sun Bocheng committed certain acts can be substantiated.

27. Substantiated suspicion must always refer to a specific person as the perpetrator of criminal acts and it must be substantiated that precisely this person committed them, whereby all the gathered information and evidence must provide all the elements for the validation of stated suspicions, i.e., all the objective and subjective elements of the classification of a criminal act. Given that the conclusion of the existence of substantiated suspicions must be comprehensive, and provide a more serious level of suspicion the points at a specific person as the perpetrator of a criminal act, and that the Council is of the opinion that in this specific case there is insufficient evidence for a substantiated suspicion. Namely, just listing evidence without connecting them with a specific criminal act for which the extradition is requested, or an unclear interpretation of evidence, in the opinion of this Council do not constitute sufficient proof in order to determine the existence of substantiated suspicion that the extraditee Sun Bocheng committed the incriminated criminal acts. Therefore, the condition from Article 35, Paragraph 1, point 7 of the ZOMPO has been met.

28. From the factual description of the criminal act of organizing, leading or participating in the triad organization from Article 294 of the KZNRK, it is stated in the Request that Sun Bocheng, cooperated with Sun Jinliang in order to organize and lead dozens of members to establish the triad organization in the County Dongh, the Counties Xihu and Honggutan, the city of Nanchang, the province Jiangxi, i.e., that Sun Bocheng had a role in decision making, commanding, coordination and management in the forming, development, and activities of the whole organization and all its activities, when he induced some members of the criminal organization to use violence, threats and other means for the conduction of illegal and criminal activities, such as assembling masses, forced transactions, opening casinos and causing trouble, and that he had financial gain from those activities. Further, Article 26 of the KZNRK stipulates that the leader that organizes or leads a criminal syndicate bears the punitive responsibility for all criminal acts committed by the syndicate. Consequently the Request (Sheet 276 of the case file) states that Sun Jinliang and Huang Haigen and others cut off eight fingers of Chen Aimin, while a case file of this Court regarding the extradition of Huang Haigen, number Kv-322/21 clearly burdens him with the criminal act of intentional inflicting bodily harm from the Article 234 of the KZNRK, for which the prescribed sentence is a minimum of 3 years of incarceration and at most the death penalty, for the causation of death or infliction of serious bodily injuries using particularly cruel methods, causing serious disability.

29. Therefore, and given that, based on the current legislation of the country requesting extradition, Sun Bocheng bears punitive responsibility for all criminal acts committed by the syndicate, it follows that, for the criminal act for which Huang Haigen is suspected, based on a substantiated suspicion, he would be sentenced with the death penalty. In this concrete case, extradition would be in contradiction with Articles 2 and 3 of the (European) Human Rights and Basic Freedoms Convention (MU 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10, hereinafter: the Convention), whereby the death penalty is forbidden, torture is inhumane and demeaning. Given that the Convention and the ZOMPO represent the applicable legal framework when ruling on extradition, this Council was obliged to take its stipulations into account and apply them to this case.

30. As a relevant source for making a decision, this Council also took into account the ruling of the European Human Rights Court in the case A.L. (X.W.) against Russia (request number 44095/14 of October 29, 2015), whereby in Paragraph 66 (Page 17) it is stated that "there is a considerable and predictable risk that the plaintiff be sentenced with a death penalty if deported into China", therefore the court decided that the plaintiff would be subject to real risk of actions that are in contradiction of Articles 2 and 3 of the Convention. Such a possibility, according to the assessment of this Council, exists in this case as well, which also constitutes an obstacle for the extradition of extraditee Sun Bocheng to the National Republic of China for the purpose of criminal prosecution.

31. Since it follows from the above mentioned that the submitted Request contradicts the stipulations of Article 35, Paragraph 1, Lines 3, 4 and 7 of the ZOMPO, the stipulations of Articles 2 and 3 of the Convention and international legal practice of the European Human Rights Court, this Council concludes that the legal prerequisites of extradition of extraditee Sun Bocheng to the National Republic of China for the purpose of criminal prosecution for criminal acts of organizing, leading or participating in the triad from Article 294 of the KZNRK, assembly of persons for the purpose of fighting from Article 292 of the KZNRK, criminal act of forced trade from the Article 226 of the KZNRK, the criminal act



of opening casinos from Article 303 of the KZNRK, and the criminal act and the criminal act of choosing and initiating conflict from Article 293 of the KZNRK, have not been met, therefore the ruling given herein is based on Article 55, Paragraph 1 of the ZOMPO.

In Zagreb, October 15, 2021

COUNCIL PRESIDENT  
Lidija Vidjak

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 Supreme Court of the Republic of Croatia.

Court officer responsible for the accuracy of the document:  
Snježana Pajek [signature illegible] [court 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, January 13, 2023.  
Certificate Nr.: 7/12 - 2022.





REPUBLIKA HRVATSKA  
ŽUPANIJSKI SUD U ZAGREBU  
Trg Nikole Šubića Zrinskog 5

中院判决书

ŽUPANIJSKI SUD  
U ZAGREBU

02-12-2021

ODJEL SUDACA ISTRAGE  
PRIMLJENO

Poslovni broj: 14 Kv II-321/2021-9  
Kir-104/2021

REPUBLIKA HRVATSKA

RJEŠENJE

Županijski sud u Zagrebu, u vijeću sastavljenom od sudaca toga suda, Lidije Vidjak kao predsjednice vijeća te Dušanke Zastavniković Duplančić i Sonje Brešković Balent kao članova vijeća, uz sudjelovanje više sudske savjetnice-specijalistice Ane Matic Puljar kao zapisničara, u predmetu izručenja stranca Sun Bochenga, zbog kaznenih djela iz članka 294. i dr. Kaznenog zakona Narodne Republike Kine, povodom zamolbe Ureda za međunarodnu suradnju Ministarstva javne sigurnosti Narodne Republike Kine od 08. veljače 2021. i 09. lipnja 2021. za izručenje stranca Sun Bochenga iz Republike Hrvatske u Narodnu Republiku Kinu radi kaznenog progona, u sjednici vijeća održanoj 15. listopada 2021.

riješio je

Na temelju članka 55. stavak 1. Zakona o međunarodnoj pravnoj pomoći u kaznenim stvarima (NN 178/04, dalje: ZOMPO), utvrđuje se da nije udovoljeno zakonskim pretpostavkama za izručenje Narodnoj Republici Kini stranca

Sun Bochenga (Jiming), rođenog 19. siječnja 1973. u Nanchangu, provincija Jiangxi, Narodna Republika Kina, s prebivalištem u gradu Nanchangu, provincija Jiangxi, Yuzhang Road 52, državljanina Narodne Republike Kine, nositelja putne isprave Narodne Republike Kine serijski broj EB2876048 s rokom važenja do 08. studenog 2027.

radi vođenja kaznenog postupka zbog postojanja osnovane sumnje da je počinio kazneno djelo zločina organiziranja, vođenja ili sudjelovanja u organizaciji trijade iz članka 294. Kaznenog zakona Narodne Republike Kine, kazneno djelo zločina okupljanja ljudi radi borbe iz članka 292. Kaznenog zakona Narodne Republike Kine, kazneno djelo zločina prisilne trgovine iz članka 226. Kaznenog zakona Narodne Republike Kine, kazneno djelo zločina otvaranja kasina iz članka 303. Kaznenog zakona Narodne Republike Kine te kazneno djelo zločina biranja i izazivanja poremećaja iz članka 293. Kaznenog zakona Narodne Republike Kine

te se odbija zamolba Ureda za međunarodnu suradnju Ministarstva javne sigurnosti Narodne Republike Kine od 08. veljače 2021. i 09. lipnja 2021. za

izručenje stranca Sun Bochenga iz Republike Hrvatske u Narodnu Republiku Kinu radi kaznenog progona, temeljem Odluke kojom se odobrava uhićenje tjeralica Narodne prokuracije okruga Yongxiu, broj YJYBPB (2020)107. od 10. srpnja 2020.

#### Obrazloženje

1. Sudac istrage Županijskog suda u Zagrebu dostavio je ovom vijeću 01. ožujka 2021. na odluku predmet u postupku izručenja stranca Sun Bochenga Narodnoj Republici Kini radi vođenja kaznenog postupka zbog kaznenog djela zločina organiziranja, vođenja ili sudjelovanja u organizaciji trijade iz članka 294 Kaznenog zakona Narodne Republike Kine (dalje: KZNRK), kaznenog djela zločina okupljanja ljudi radi borbe iz članka 292. KZNRK, kaznenog djela zločina prisilne trgovine iz članka 226. KZNRK, kaznenog djela zločina otvaranja kasina iz članka 303 KZNRK te kaznenog djela zločina biranja i izazivanja poremećaja iz članka 293 KZNRK, a povodom zamolbe Ureda za međunarodnu suradnju Ministarstva javne sigurnosti Narodne Republike Kine od 8. veljače 2021. (list 275-291 spisa).

2. Izručenik se nalazi u ekstradicijskom pritvoru određenom rješenjem suca istrage broj Kir-104/2021 od 19. siječnja 2021. (list 24), pravomoćnim dana 01. veljače 2021.

3. Ispitan kod suca istrage 19. siječnja 2021., sukladno odredbi članka 52. ZOMPO izručenik je naveo da razumije razloge uhićenja i što mu se stavlja na teret, kao i da je upoznat s pretpostavkama za izručenje i uhićenje, postupkom za pojednostavljeno izručenje i pravima iz članka 54. stavak 1. i članka 40. stavka 2. ZOMPO. Izričito je naveo da se protivi izručenju Narodnoj Republici Kini.

4. S obzirom na nedostatke podnesene zamolbe Ureda za međunarodnu suradnju Ministarstva javne sigurnosti Narodne Republike Kine od 8. veljače 2021. ovo vijeće je, putem suca istrage, 19. travnja 2021. (list 597-598) zatražilo da se podnesena zamolba sastavi sukladno odredbi članka 43. ZOMPO, s valjanim prijevodom na hrvatski jezik, nakon čega je u spis zaprimljena zamolba Ureda za međunarodnu suradnju Ministarstva javne sigurnosti Narodne Republike Kine od 09. lipnja 2021. za izručenje stranca Sun Bochenga iz Republike Hrvatske u Narodnu Republiku Kinu radi vođenja kaznenog postupka (list 637-664).

5. Nakon provedenog postupka radi utvrđivanja ispunjenja uvjeta za izručenje, ovo vijeće je utvrdilo da su ostvareni uvjeti za odbijanje izručenja propisani odredbom članka 35. stavka 1. točke 7. ZOMPO, u odnosu na sva kaznena djela za koja je izručenje zatraženo, odnosno da su ispunjeni uvjeti iz članka 35. stavka 1. točke 3. ZOMPO u odnosu na kazneno djelo zločina otvaranja kasina iz članka 303. KZNRK te uvjeti iz članka 35. stavka 1. točke 4. ZOMPO u odnosu na kazneno djelo zločina okupljanja ljudi radi borbe iz članka 292. KZNRK te kazneno djelo zločina biranja i izazivanja poremećaja iz članka 293. KZNRK, zbog čega je valjalo utvrditi da nije udovoljeno zakonskim pretpostavkama za izručenje Narodnoj Republici Kini stranca Sun Bochenga.

6. Odredbom članka 35. ZOMPO propisano je da se izručenje neće dopustiti:

1. ako je osoba čije se izručenje traži državljanin Republike Hrvatske,  
2. ako je djelo zbog kojeg se traži izručenje počinjeno na području Republike Hrvatske, protiv nje ili njezina državljanina,

3. ako djelo zbog kojeg se traži izručenje nije kazneno djelo i po domaćem zakonu i po zakonu države u kojoj je počinjeno,

4. ako je po domaćem zakonu nastupila zastara kaznenog gonjenja ili zastara izvršenja kazne prije nego što je strani državljanin pritvoren ili kao okrivljenik ispitan,

5. ako je stranac čije se izručenje traži zbog istog djela od domaćeg suda već osuđen, ili ako je za isto djelo od domaćeg suda pravomoćno oslobođen, osim ako se stječu uvjeti za ponavljanje kaznenog postupka predviđeni Zakonom o kaznenom postupku, ili ako je protiv stranca u Republici Hrvatskoj zbog istog djela počinjenog prema Republici Hrvatskoj pokrenut kazneni postupak, a ako je pokrenut postupak zbog djela počinjenog prema državljaninu Republike Hrvatske – ako nije položeno osiguranje za ostvarivanje imovinskopravnog zahtjeva oštećenika,

6. ako nije utvrđena istovjetnost osobe čije se izručenje traži,

7. ako nema dovoljno dokaza za osnovanu sumnju da je stranac čije se izručenje traži počinio određeno kazneno djelo ili da postoji pravomoćna presuda.

7. Ispitujući osnovanost podnesene Zamolbe ovo vijeće utvrdilo je kako nisu ispunjene pretpostavke za izručenje predviđene odredbom članka 35. stavka 1. točke 3., 4. i 7. ZOMPO.

8. Naime, izručenje stranca Sun Bochenga traži se radi vođenja kaznenog postupka zbog postojanja osnovane sumnje da je počinio kazneno djelo zločina organiziranja, vođenja ili sudjelovanja u organizaciji trijade iz članka 294. KZNRK, kaznenog djela zločina okupljanja ljudi radi borbe iz članka 292. KZNRK, kaznenog djela zločina prisilne trgovine iz članka 226. KZNRK, kaznenog djela zločina otvaranja kasina iz članka 303. KZNRK te kaznenog djela zločina biranja i izazivanja poremećaja iz članka 293. KZNRK.

Kazneno djela zločina organiziranja, vođenja ili sudjelovanja u organizaciji trijade iz članka 294. KZNRK

9. U odnosu na počinjenje kaznenog djela zločina organiziranja, vođenja ili sudjelovanja u organizaciji trijade iz članka 294. KZNRK iz Zamolbe proizlazi kako je kazneno djelo počinjeno u razdoblju od travnja 1994. do svibnja 2020. na način da je Sun Bocheng, surađivao sa Sun Jinliangom kako bi organizirao i vodio desetke članova da uspostave organizaciju trijade u okrugu Donghu, okrug Xihu i Honggutan, grad Nanchang, provincija Jiangxi. Sun Bocheng je igrao ulogu u donošenju odluka, zapovijedanju, koordinaciji i upravljanju formiranjem, razvojem, djelovanjem cijele organizacije i aktivnosti, kada je naveo članove zločinačke organizacije da koriste

nasilje, prijetnje i druga sredstva za provođenje ilegalnih i kriminalnih aktivnosti, kao što su okupljanje gomile, prisilne transakcije, otvaranje kockarnica te izazivanje nevolja te stekao ekonomsku korist od toga. Za navedeno kazneno djelo primjenjuje se članak 294. KZNRK koji propisuje da oni koji organiziraju i vode organizacije trijade bit će osuđeni na kaznu zatvora u trajanju od najmanje 7 godina i oduzeta imovina, no temeljem članka 45. KZNRK kazna zatvora na određeno vrijeme ne može biti duža od 15 godina, osim odredbi članka 50. i 69. KZNRK.

10. Naime, po svom zakonskom opisu iz članka 294. KZNRK, kazneno djelo odgovaralo bi kaznenom djelu zločinačkog udruženja iz članka 328. stavka 1. KZ/11 kojim je propisano da tko organizira ili vodi zločinačko udruženje, kaznit će se kaznom zatvora od 6 mjeseci do 5 godina. Odredbom članka 81. stavak 1. KZ/11 propisano je da zastara kaznenog progona nastupa nakon 15 godina za kaznena djela za koja se može izreći kazna zatvora u trajanju dužem od 3 godine. Nadalje, strancu se stavlja na teret da je kazneno djelo počinio u razdoblju od travnja 1994. do svibnja 2020., dok iz tjeralice Interpola i zamolnice (list 275 i 652 spisa) proizlazi da je Sun Bocheng u bijegu od 15. studenog 2018., stoga je po ocjeni ovog vijeća činjenični opis kaznenog djela neprecizan i nejasan pa se temeljem istog ne može sa sigurnošću utvrditi kada nastupa zastara kaznenog progona po domaćem zakonu.

11. Nadalje, za predmetno kazneno djelo zamolba ne prilaže nikakav dokaz iz kojeg bi proizlazila mogućnost da ovo vijeće provjeri osnovanost sumnje da je upravo izručeni Sun Bocheng počinio to kazneno djelo, stoga je ispunjen uvjeti iz članka 35. stavka 1. točke 7. ZOMPO.

Kazneno djelo zločina okupljanja ljudi radi borbe iz članka 292. Kaznenog zakona Narodne Republike Kine

12. U odnosu na počinjenje kaznenog djela zločina okupljanja ljudi radi borbe iz članka 292. KZNRK, iz Zamolbe proizlazi kako je vođa zločinačke organizacije Sun Bocheng dana 17. travnja 1997. uputio svog člana zločinačke organizacije Ye Jianhua da s pištoljem ode u blizinu ceste Chuanshan, okrug XiHu, grad Nanchang, provincija Jiangxi i koordinirao sa Sun Jinliangom. Član organizacije Huang Haigen i druga kriminalna organizacija Zou Chunhui i drugi su se sukobili i pucali jedni na druge, ozlijedivši brojne pješake, uključujući Qin Yonghonga, čija ozljeda je bila lakša ozljeda drugog stupnja. Za navedeno kazneno djelo primjenjuje se članak 292. KZNRK koji propisuje da tko okupi mnoštvo radi tučnjave kaznit će se zatvorom na određeno vrijeme, kaznenim zatvorom ili nadzorom u trajanju od najviše tri godine, a aktivni sudionici bit će osuđeni na kaznu zatvora u trajanju od najmanje tri i ne više od 10 godina.

13. Naime, po svom zakonskom opisu iz članka 292. KZNRK, kazneno djelo odgovaralo bi kaznenom djelu sudjelovanja u tučnjavi iz članka 122. stavka 2. KZ/11 kojim je propisano da tko organizira ili vodi grupu od tri ili više osoba koje sudjeluju u tučnjavi ili napadu iz stavka 1. članka ili organizira takvu tučnjavu ili napad, kaznit će se kaznom zatvora od jedne do osam godina. Odredbom članka 81. stavak 1. KZ/11 propisano je da zastara kaznenog progona nastupa nakon 20 godina za kaznena djela za koja se može izreći kazna zatvora u trajanju dužem od 5 godina. Slijedom

navedenog, za kazneno djelo iz članka 292. KZNRK po domaćem zakonu nastupila je zastara kaznenog progona dana 17. travnja 2017. godine, stoga je ispunjen uvjet iz članka 35. stavka 1. točke 4. ZOMPO-a.

14. Nadalje, za predmetno kazneno djelo zamolba ne prilaže nikakav dokaz iz kojeg bi proizlazila mogućnost da ovo vijeće provjeri osnovanost sumnje da je upravo izručnik Sun Bocheng počinio to kazneno djelo, stoga je ispunjen uvjeti iz članka 35. stavka 1. točke 7. ZOMPO.

#### Kazneno djelo zločina prisilne trgovine iz članka 226. KZNRK

15. U odnosu na počinjenje kaznenog djela zločina prisilne trgovine iz članka 226. KZNRK, iz Zamolbe proizlazi da je od ožujka 2003. do studenog 2006. osumnjičeni Sun Bocheng monopolizirao pravo na rad sa vodenim proizvodima na tržišnici povrća Dunzitan u okrugu Donghu u gradu Nanchang na način da je vodio člana svoje kriminalne organizacije Xiong Shiming i druge da koriste prijetnje, zastrašivanje i druge metode kako bi prisilili Zhao Xiuhua i druge veletrgovce vodenim proizvodima da kupuju vodene proizvode po cijeni većoj od tržišne veleprodajne cijene za ponovnu distribuciju. Kroz navedene metode Sun Bocheng i drugi su ostvarili ukupno više od 3 milijuna yuana nelegalne dobiti. Za navedeno kazneno djelo primjenjuje se članak 226. KZNRK koji propisuje kaznu zatvora od najviše 3 godine ili kaznu pritvora, zajedno sa novčanom kaznom ili novčanom kaznom, a ako su okolnosti posebno ozbiljne najmanje 3 godine, ali ne više od 7 godina i novčanom kaznom.

16. Naime, po svom zakonskom opisu iz članka 226. KZNRK, kazneno djelo odgovaralo bi kaznenom djelu iznude iz članka 243. stavka 2. KZ/11, koji propisuje da tko s ciljem da sebi ili drugome pribavi protupravnu imovinsku korist silom i ozbiljnom prijetnjom prisili drugog da što učini, na učini ili trpi na štetu svoje ili tuđe imovine, a prouzročena je znatna šteta, počinitelj će se kazniti kaznom zatvora od 1 do osam godina. Odredbom članka 81. stavak 1. KZ/11 propisano je da zastara kaznenog progona nastupa nakon 20 godina za kaznena djela za koja se može izreći kazna zatvora u trajanju dužem od 5 godine. Slijedom navedenog, za kazneno djelo iz članka 226. KZNRK po domaćem zakonu zastara kaznenog progona nastupa u studenom 2026. godine, no po zakonu države moliteljice zastara za predmetno kazneno djelo nastupila je u studenom 2016. temeljem članka 87. stavka 2. KZNRK.

17. Nadalje, za predmetno kazneno djelo zamolba ne prilaže nikakav dokaz iz kojeg bi proizlazila mogućnost da ovo vijeće provjeri osnovanost sumnje da je upravo izručnik Sun Bocheng počinio to kazneno djelo, stoga je ispunjen uvjeti iz članka 35. stavka 1. točke 7. ZOMPO.

#### Kazneno djelo zločina otvaranja kasina iz članka 303. KZNRK

18. U odnosu na počinjenje kaznenog djela zločina otvaranja kasina iz članka 303. KZNRK, iz Zamolbe pod točkom 1) proizlazi da je Sun Bocheng od lipnja 2009. pa do listopada 2013. zajedno sa svojim članom kriminalne organizacije Hu Chuangxin i drugima, sukcesivno u gradu Nanchang, provinciji Jiangxi, okrugu Donghu, postavio više od 50 automata za kockanje da bi drugi mogli kockati. Sun Bocheng je bio

odgovoran za rad i upravljanje kockarnicom i od toga je profitirao, a kasino je zaradio više od 5 milijuna juana u nelegalnoj dobiti. Nadalje, pod točkom 2) navedeno je da su u listopadu 2015. osumnjičeni Sun Bocheng i Yang Qiang, član zločinačke organizacije, osigurali su opremu za kockanje poput Pai Gowa i pokera u gostinskoj sobi hotela Gloria Plaza u gradu Nanchang u provinciji Jiangxi i organizirali niz sudionika kockanja za provođenje kockanja. Sun Bocheng je ostvario ukupno više od 2 milijuna yuana nelegalne dobiti. Za navedeno kazneno djelo primjenjuje se članak 303. KZNRK koji propisuje kaznu zatvora od najviše 3 godine, kaznu zadržavanja ili nadzora te novčanu kaznu, a ako su okolnosti ozbiljne zakonska kazna nije manja od 5, ali ne viša od 10 godina.

19. Naime, iz činjeničnog opisa kaznenog djela pod točkom 1. proizlazi da je Sun Bocheng u suradnji da drugim članovima zločinačke organizacije postavio više od 50 automata za kockanje, bio odgovoran za rad i upravljanje kockarnicom i od toga je profitirao, no obzirom da je otvaranje kockarnica u Republici Hrvatskoj legalna djelatnost, isto ne predstavlja kazneno djelo po domaćem zakonu, odnosno kazneno djelo po svom činjeničnom opisu na način naveden u Zamolbi ne može se podvesti pod zakonski opis nekog od kaznenih djela iz KZ/11, stoga je u odnosu na kazneno djelo zločina otvaranja kasina iz članka 303. KZNRK, opisanog u točki 1. ispunjen zakonski uvjet iz članka 35. stavka 1. točke 3. ZOMPO

20. Nadalje, u odnosu na činjenični opis kaznenog djela pod točkom 2. proizlazi da su Sun Bocheng i članovi zločinačke organizacije osigurali opremu za kockanje poput Pai Gowa i pokera u gostinskoj sobi hotela Gloria Plaza u gradu Nanchang u provinciji Jiangxi i organizirali niz sudionika kockanja za provođenje kockanja. Sun Bocheng je ostvario ukupno više od 2 milijuna yuana nelegalne dobiti. Naime, po takvom zakonskom opisu iz članka 303. KZNRK, kazneno djelo odgovaralo bi kaznenom djelu nedozvoljene igre na sreću iz članka 237. KZ/11, koji propisuje da tko s ciljem da sebi ili drugome pribavi imovinsku korist bez odobrenja nadležnog tijela javno priredi, obavi ili promiče igru na sreću kaznit će se kaznom zatvora od 3 godine, a ako je kaznenim djelom ostvarena znatna imovinska korist, počinitelj će se kazniti kaznom zatvora od jedne do osam godina. Odredbom članka 81. stavak 1. KZ/11 propisano je da zastara kaznenog progona nastupa nakon 20 godina za kaznena djela za koja se može izreći kazna zatvora u trajanju dužem od 5 godine. Slijedom navedenog, za predmetno kazneno djelo po domaćem zakonu zastara kaznenog progona nastupa u studenom 2035. godine.

21. Nadalje, za predmetno kazneno djelo zamolba ne prilaže nikakav dokaz iz kojeg bi proizlazila mogućnost da ovo vijeće provjeri osnovanost sumnje da je upravo izručenik Sun Bocheng počinio to kazneno djelo, stoga je ispunjen uvjeti iz članka 35. stavka 1. točke 7. ZOMPO.

Kazneno djelo zločina biranja i izazivanja poremećaja iz članka 293. Kaznenog zakona Narodne Republike Kine

22. U odnosu na počinjenje kaznenog djela zločina biranja i izazivanja poremećaja iz članka 293. KZNRK, iz Zamolbe pod točkom 1.) proizlazi da su dana 27. studenog 2003. osumnjičenik Sun Bocheng uputio nekoliko članova zločinačke organizacije

koja je držala pištolje, mačete i sjekire Alat, odjurila u provincijsku narodnu bolnicu Jiangxi, kako bi se osvetila Tu Wenu, pritom su nevini ljudi Chen Jiping, Ouyang Xiaoyong i drugi pretučeni noževima i sjekirama, a ozljede su lakše ozljede. Nadalje, pod točkom 2.) u srpnju 2004. Sun Bocheng je posredovao u sporu između člana svoje i člana druge zločinačke organizacije, nakon što je odbijen sastanak optužio je Xiong Shiminga da mačetom, sjekirama i drugim alatima progoni Li Yueming, koji je zadobio lakšu ozljedu. Zatim, pod točkom 3.) dana 08. prosinca 2010. osumnjičeni Sun Bocheng je okupio članove svoje zločinačke organizacije kako bi pojurili u blizinu ceste Minde u Nanchang, provincija Jiangxi te su napali vozača Zhu Xinliang i Zhu Yongquan, koji su lakše ozlijeđeni. U prvoj polovici pod točkom 4.) 2012. osumnjičeni Sun Bocheng je zajedno sa drugim članovima kriminalne organizacije posudio kockarima Tao Hongbiao i Xie Jun kockarnicu u vrijednosti od 2 milijuna hongkonških dolara, a dogovoreno je kako će novac vratiti po povratku u Nanchang, inače će se kamate obračunavati po godišnjoj stopi od 36%, no u konačnici zajam nije vraćen i nakon prijetnji i uznemiravanja prisiljeni su otplatiti više od 2 milijuna juana. Nastavno pod točkom 5.) u siječnju 2014. Sun Bocheng je zajedno sa članovima kriminalne organizacije posudio kockarski kod kockara He Zhiqiang vrijedan 12 milijuna hongkonških dolara i dogovorili se da će He Zhiqiang vratiti zajam po povratku u Nanchang, inače će se kamate obračunavati po godišnjoj stopi od 36%, no u konačnici zajam nije vraćen i nakon prijetnji i uznemiravanja prisiljen je vratiti više od 15 milijuna juana glavnice i kamata. Nadalje, pod točkom 6.) u listopadu 2014. osumnjičeni Sun Bocheng i njegovi članovi dali su Gong Chaoyang 6 milijuna juana zajma po godišnjoj kamatnoj stopi od 36%, rok zajma jedan mjesec, a kamata se obračunava po godišnjoj kamatnoj stopi od 72%, ako se ne vrati nakon isteka, pa su u konačnici Gong Chaoyang bili prisiljeni otplatiti 10 milijuna juana. U konačnici pod točkom 7.) u svibnju 2015. Sun Bocheng je optužio članove svoje organizacije da pohrle kako bi tukli, prijetili i zastrašivali nekoliko stanara, Nie Yuping je lakše ozlijeđen. Za navedeno kazneno djelo primjenjuje se članak 293. KZNRK, koji propisuje kaznu zatvora od najviše pet godina, kazneno zadržavanje ili nadzor, a svako tko više puta okupi druge da izvrše navedena kaznena djela i ozbiljno naruše društveni poredak, kaznit će se kaznom zatvora ne manjom od 5, a ne više od 10 godina, a može se kazniti novčanom kaznom.

23. Naime, iz činjeničnog opisa kaznenog djela pod točkom 1., 2., 3. i 7. proizlazi da je Sun Bocheng organizirao zastrašivanje i napad na članove druge zločinačke organizacije, što je u konačnici rezultiralo lakšim tjelesnim ozljeđivanjem. Naime, po takvom činjeničnom opisu kaznenog djela iz članka 293. KZNRK, kazneno djelo odgovaralo bi prema bitnim obilježjima kaznenom djelu iz članka 117. stavka 1. KZ/11, koji propisuje da tko drugog tjelesno ozlijedi ili mu naruši zdravlje, kaznit će se kaznom zatvora do 1 godine, odnosno kaznenom djelu prijetnje iz članka 139. stavka 2. koji propisuje da tko drugome ozbiljno prijeti oružjem, kaznit će se kaznom zatvora do 3 godine. Odredbom članka 81. stavak 1. KZ/11 propisano je da zastara kaznenog progona nastupa nakon 10 godina za kaznena djela za koja se može izreći kazna zatvora u trajanju dužem od 1 godine. Slijedom navedenog, za kazneno djelo prijetnje po domaćem zakonu zastara kaznenog progona nastupa za djelo pod tokom 1.) dana 27. studenog 2013., za djelo pod točkom 2.) u srpnju 2014., za djelo pod točkom 3.) dana 08. prosinca 2020. te za djelo pod točkom 7.) u svibnju 2025. godine, stoga je za prva tri navedena djela po domaćem zakonu nastupila zastara



kaznenog progona, odnosno ispunjen je uvjet iz članka 35. stavka 1. točke 4. ZOMPO-a.

24. Nadalje, u odnosu na činjenični opis kaznenog djela iz točke 4., 5. i 6. proizlazi da je Sun Bocheng zajedno sa drugim članovima zločinačke organizacije posudio zajam koji je u konačnici vraćen nakon prijetnji i uznemiravanja. Naime, po takvom činjeničnom opisu kaznenog djela iz članka 293. KZNRK, kazneno djelo odgovaralo bi prema bitnim obilježjima kaznenom djelu protupravne naplate iz članka 323. KZ/11, koji propisuje da tko od drugog silom ili ozbiljnom prijetnjom naplati tražbinu koju ovaj druguje njemu ili drugoj osobi, kaznit će se kaznom zatvora od 6 mjeseci do 5 godina, a ako je počinitelj kaznenog djela upotrijebio silu ili prijetnju da će izravno napasti život ili tijelo dužnika ili druge osobe, kaznit će se kaznom zatvora od 1 do 8 godina. Odredbom članka 81. stavak 1. KZ/11 propisano je da zastara kaznenog progona nastupa nakon 20 godina za kaznena djela za koja se može izreći kazna zatvora u trajanju dužem od 5 godina. Slijedom navedenog, za kazneno djelo protupravne naplate po domaćem zakonu zastara kaznenog progona nastupa za djelo pod točkom 4.) u prvoj polovici 2032., za djelo pod točkom 5.) u siječnju 2034., za djelo pod točkom 6.) u listopadu 2034. godine.

25. Nadalje, za predmetno kazneno djelo zamolba ne prilaže nikakav dokaz iz kojeg bi proizlazila mogućnost da ovo vijeće provjeri osnovanost sumnje da je upravo izručenik Sun Bocheng počinio to kazneno djelo, stoga je ispunjen uvjeti iz članka 35. stavka 1. točke 7. ZOMPO.

26. Nadalje, nakon uvida u cjelokupnu dokumentaciju, ocjena je ovog vijeća da u odnosu na sva kaznena djela za koja se traži izručenje, nema dovoljno dokaza za osnovanu sumnju da je stranac Sun Bocheng čije se izručenje traži počinio određeno kazneno djelo. Naime, kao dokazi u zamolbi od 08. veljače 2021. navedeni su priznanje osumnjičenika Tu Jianhui, Ye Jianhua, Sun Bolin i Zou Chunhui i svjedočenje svjedoka Tu Shenggen, Zhang Pingying (list 280-281 spisa), no interpretacija istih je nejasna i nepotpuna, niti su ista dostavljena u cjelovitom obliku u formi zapisnika, što nije otklonjeno niti u dopunskoj zamolbi od 09. lipnja 2021. Nastavno je u zamolbi (list 276 spisa) navedeno da su prikupljeni dokazi i mišljenja o procjenama ozljeda, transkripti identifikacije, transkripti inspekcije na licu mjesta, audiovizualni materijali, no u dopuni zamolbe država moliteljica nije iste priložila pa da bi ovo vijeće moglo ocjenjivati da li u odnosu na pojedino kazneno djelo egzistira osnovana sumnja da je stranac Sun Bocheng ista počinio.

27. Osnovana sumnja uvijek se mora odnositi na određenu osobu kao počinitelja kaznenog djela i da je upravo ta osoba počinila kazneno djelo pri čemu iz prikupljenih podataka i dokaza moraju proizlaziti svi elementi osnovane sumnje, odnosno svi objektivni i subjektivni sastojci obilježja kaznenog djela. S obzirom da zaključak o postojanju osnovane sumnje mora predstavljati zaokruženu cjelinu i ozbiljniju razinu sumnje koja upućuje upravo na konkretnu osobu kao počinitelja kaznenog djela, a prema ocjeni ovog vijeća u konkretnom slučaju nema dovoljno dokaza za istu. Naime, puko nabrojanje dokaza bez povezivanja sa konkretnim kaznenim djelom za koje se izručenje traži, odnosno nejasna interpretacija dokaza, po ocjeni ovog vijeća

nisu dovoljan dokaz da bi se utvrdilo postojanje osnovane sumnje da je izručnik Sun Bocheng počinio inkriminirana kaznena djela. Slijedom navedenog, ispunjen je uvjet iz članka 35. stavka 1. točke 7. ZOMPO.

28. Iz činjeničnog opisa kaznenog djela zločina organiziranja, vođenja ili sudjelovanja u organizaciji trijade iz članka 294. KZNRK iz Zamolbe proizlazi da je Sun Bocheng, surađivao sa Sun Jinliangom kako bi organizirao i vodio desetke članova da uspostave organizaciju trijade u okrugu Donghu, okrug Xihu i Honggutan, grad Nanchang, provincija Jiangxi, odnosno da je Sun Bocheng igrao ulogu u donošenju odluka, zapovijedanju, koordinaciji i upravljanju formiranjem, razvojem, djelovanjem cijele organizacije i aktivnosti, kada je naveo članove zločinačke organizacije da koriste nasilje, prijetnje i druga sredstva za provođenje ilegalnih i kriminalnih aktivnosti, kao što su okupljanje gomile, prisilne transakcije, otvaranje kockarnica te izazivanje nevolja te stekao ekonomsku korist od toga. Nadalje, članak 26. KZNRK propisuje da čelnik koji organizira ili vodi kriminalni sindikat snosi kaznenu odgovornost za sva kaznena djela koja je počinio sindikat. Nastavno u zamolbi (list 276 spisa) navedeno je da su Sun Jinliang i Huang Haigen i drugi odsjekli osam prstiju Cheng Aiminu, dok je iz uvida u ovosudni spis kojim se traži izručenje Huang Haigena broj Kv-322/21 razvidno da mu se stavlja na teret kazneno djelo namjerne ozljede iz članka 234. KZNRK, za koje je zapriječena kazna od minimalno tri godine do smrtne kazne i to za uzrokovanje smrti ili nanošenje ozbiljnih ozljeda upotrebom posebnih okrutnih metoda, uzrokujući ozbiljnu invalidnost.

29. Slijedom navedenog, a obzirom da temeljem važećeg kaznenog zakonodavstva države moliteljice Sun Bocheng snosi kaznenu odgovornost za sva kaznena djela koja je počinio sindikat, proizlazi da mu za kazneno djelo za koje je osnovano sumnjivo da bi ga počinio Huang Haigen zapriječena smrtna kazna. U konkretnom slučaju, izručenje bilo bi protivno članku 2. i članku 3. (Europske) Konvencije za zaštitu ljudskih prava i temeljnih sloboda (MU 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10, dalje: Konvencija), a kojim odredbama je zabranjena smrtna kazna, mučenje te nečovječno i ponižavajuće postupanje. Budući da Konvencija uz ZOMPO predstavlja pravni izvor koji se primjenjuje kod odluke o izručenju ovo vijeće bilo je dužno uzeti u obzir njene odredbe i primijeniti ih na ovaj konkretni slučaj.

30. Kao relevantan izvor prilikom donošenja odluke ovo vijeće uzelo je u obzir i odluku Europskog suda za ljudska prava u predmetu A.L. (X.W.) protiv Rusije (zahtjev broj 44095/14 od 29. listopada 2015.) kojom je u paragrafu 66 (stranica 17) navedeno kako „postoji značajan i predvidljiv rizik da podnositelju zahtjeva bude izrečena smrtna kazna ako bude deportiran u Kinu” pa je sud zaključio da bi podnositelj zahtjeva zbog prisilnog povratka u Kinu bio izložen stvarnom riziku od postupanja protivno člancima 2. i 3. Konvencije. Takva mogućnost, prema ocjeni ovog vijeća realno postoji i u konkretnom slučaju, što također predstavlja zapreku za izručenje stranca Sun Bochenga Narodnoj Republici Kini radi njegovog kaznenog progona.

31. Kako iz izloženog proizlazi da je podnesena Zamolba suprotna odredbama članka 35. stavka 1. točke 3., 4. i 7. ZOMPO, odredbama članka 2. i 3. Konvencije te međunarodnom pravu iz prakse Europskog suda za ljudska prava, ovo vijeće je utvrdilo da nije udovoljeno zakonskim pretpostavkama za izručenje Narodnoj Republici Kini stranca Sun Bochenga radi vođenja kaznenog postupka zbog postojanja osnovane sumnje da je počinio kazneno djelo zločina organiziranja, vođenja ili sudjelovanja u organizaciji trijade iz članka 294. Kaznenog zakona Narodne Republike Kine, kazneno djelo zločina okupljanja ljudi radi borbe iz članka 292. Kaznenog zakona Narodne Republike Kine, kazneno djelo zločina prisilne trgovine iz članka 226. Kaznenog zakona Narodne Republike Kine, kazneno djelo zločina otvaranja kasina iz članka 303. Kaznenog zakona Narodne Republike Kine te kazneno djelo zločina biranja i izazivanja poremećaja iz članka 293. Kaznenog zakona Narodne Republike Kine te je na temelju članka 55. stavak 1. ZOMPO riješeno kao u izreci.

U Zagrebu 15. listopada 2021.

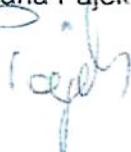
PREDSJEDNICA VIJEĆA,

Lidija Vidjak, v. r.

Pouka o pravu na žalbu:

Protiv ovog rješenja nezadovoljna stranka ima pravo žalbe u roku 3 (tri) dana računajući od primitka ovjerenog prijepisa rješenja. Žalba se podnosi pismeno u 3 (tri) istovjetna primjerka ovome sudu, a o njoj odlučuje Vrhovni sud Republike Hrvatske.

Za točnost otpavka – ovlaštenu službenik  
Snježana Pajek



2  
K  
LEZIK  
M

