

Process: 127/21.5 YRCBR  
Conventional No.: JTRC  
Reporter: ANA CAROLINA CARDOSO  
Descriptors: **EXTRADITION**  
LEGAL REGULATIONS  
GUARANTEES OF NON-EXECUTION OF PENALTY OF LIFE PRISON  
OFFICIAL REPRESENTATION OF THE APPLICANT STATE  
OPTIONAL REFUSAL OF ENFORCEMENT

Agreement Date: 01/19/2022  
Voting: UNANIMITY  
Full Text: s  
Procedural Means: **EXTRADITION**  
Decision: AUTHORIZED  
National Legislation: ART. 3rd, 6th, Nos. 1, ALS. E) EF), E 2, AL. B), E 18.º, No. 2, OF LAW 144/99, OF 31-08; ART. 3rd, AL. A), CONVENTION ON DIPLOMATIC RELATIONS; ARTS 4th, AL. B), AND 50, OF THE **EXTRADITION** LAW OF THE PEOPLE'S REPUBLIC OF **CHINA**

Summary:

**I - Extradition (passive) is governed by the rules of international treaties to which the requesting state and Portugal are party, by international conventions and agreements that bind the Portuguese State - in the case revealed in the case file, the Extradition Treaty signed between the Portuguese Republic Portugal and the People's Republic of China , signed on 31/01/2007, approved by Resolution of the Assembly of the Republic no. 2009) on 04-30-2009, and published in the DR, 1st Series, no. of 31-08, the provisions of the Criminal Procedure Code (Article 3 of the aforementioned Law) being subsidiarily applicable.**

**II – The combination of the norms provided for in article 3, al. a), of the Convention on Diplomatic Relations, signed in Vienna on 18-04-1961, approved in Portugal by Decree-Law no . in article 50 of the Extradition Law of the People's Republic of China , it follows that the Head of Mission of that State in a third country, in this case the Ambassador (Article 4 of the said Convention), may assume, on behalf of its Government, the official commitment not to apply to the extradited the life sentence, not being necessary to prove that he is formally authorized either by the Ministry of Foreign Affairs or by the Supreme People's Court.**

**III – The instability or family breakdown caused by the extradition of the defendant does not constitute sufficient reason for the refusal provided for in paragraph b) of article 4 of the Treaty of Estradition signed between the Portuguese Republic and the People's Republic of China .**

**IV – In fact, the removal of the family is for the person being extradited an inevitable consequence of extradition that does not override the superior interest of international cooperation in the pursuit of the good administration of justice.**

Full Text Decision: Agree, in a conference, at the Court of Appeal of Coimbra:

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 **HZ** - married, born in (...), in the province of (...), holder of Chinese passport no. (...), issued in (...) to (...), valid until (...), residing at Rua (...), no. (...), 5th floor [currently at Quinta (...), (...)], in (...), 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 means of fraudulent practices, carried out from October 2013 to August 2018, punishable under 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 Prosecutor's Office of Pudong, Shanghai, for having publicly promoted, as legal representative of the company (...), *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 detained in the city of (...) to (...), heard in this Court of Appeal to (...), within the scope of the detention validation process no (...), of (...) section, attached, confirmed the detention, which was later replaced by the coercive measures of periodic presentations and the ban on going abroad.

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

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## **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 grant 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, with His Excellency the Assistant Secretary of State and Justice, by competence delegated to His Excellency the Minister of Justice, by order of 04 August 2021, the **extradition** request is considered 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 **HZ** , under the Treaty between the Portuguese Republic and the People's Republic of **China** on **Extradition** , signed in Beijing on 31 January 2007.*

*Within the scope of the criminal proceedings that are being carried out by the Economic Crime Investigation Department of the Ministry of Public Security of the People's Republic of **China** , the extradited person is suspected of having committed (1) a crime of fraud to raise funds, foreseen and punished by the Article 192 of the Criminal Law of the People's Republic of **China** , with an abstractly applicable maximum penalty of life imprisonment, for acts committed from October 2013 to August 2018.*

*The facts imputed to **HZ** by the Chinese judicial authorities are similar in the Portuguese legal system in the crimes of qualified fraud and the exercise of the illegal 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 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 People's Republic of **China** that, in the event that **HZ** 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.

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 in Beijing on 31 January 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 **HZ** 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.

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## **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 in Beijing on 31 January 1007, the competent authorities of the Republic of the People's Republic of **China** requested the Portuguese State to **extradite** the citizen **HZ** , above better identified, 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** , in view of 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) ZH formed a special sales team in (...), from (...) to (...), without the national finance authority approval, to sell private equity funds established on behalf of Huying Investment Company through Huying Asset Company to illegally absorb deposits from the public;*
- b) ZH had been hired by JJ, the person who controls the Group (...), this group having established the Huying Investment Company, for the position of general manager to sell those private equity funds;*
- c) ZH was responsible for the administration and operation of Huying Asset Company, and agrees with JJ that ZH'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, ZH 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 the Group (...) and its subsidiary companies did not have the relevant qualifications to absorb deposits from the public and sell private equity funds and that the majority of private equity were not registered in (...) and the 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 , with the following content:

*“ The Embassy of the People's Republic of **China** in the Portuguese Republic presents 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 ZH from Portugal to **China** , if ZH 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 offers a warm greeting to the Attorney General's Office of the Portuguese Republic and has the honor of referring to the case of ZH, a suspect whose **extradition** was requested by the Chinese side from the Portuguese side, and provides the following clarifications and guarantee on the application of the penalty in the referred case.*

*ZH 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 ZH's conduct constitutes a crime and whether and what kind of penalty ZH should be sentenced is up to the trial court to pronounce, with based on the facts, evidence and relevant laws after ZH 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 Extraditane is married to a Chinese citizen, and has three children: YG1, born on (...); YG,2 and YG3, both born on (...). 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 the day (...), 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 of ..., and given the parent's difficulties in reconciling domestic routines with child care, since they are two children aged two and requiring permanent attention from an adult, this EMAT endeavored to integrate of YG2 and YG3 children in school equipment.*

*After these services ensured a place in day care, YG2 and YG3 integrated the school context on the day (...), in day care (...). According to the kindergarten teacher, integration took place normally.*

*The director of the College (...), an establishment attended by the young YG1, 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 the day (...) 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 the day (...). This situation was reported to the medical emergency line 112, by a family friend (...), residing in ....*

*The household does not have a family back-up, they currently have the support of the daughter and son-in-law of (...), (...) and (...), respectively, who went to (...), on (...) to support the parent, children and young. However, support from (...) 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, (...) and (...), 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 routines of daily life, in view of the worsening of his condition. health situation, to facilitate the recovery of this father. In this way, and if this situation occurs, the protection of the young YG1 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 health situation of the parent, in order to safeguard the well-being of the young YG1 (14 years old), we propose the application of the measure to promote and protect support with the father.

With regard to children YG2 and YG3 (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 YG1 in danger and compromise the entire balance of the family system. In this sense, in order to safeguard the well-being of YG2 and YG3 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 fostering promotion and protection measure. residential in a Temporary Shelter, close to the parent's area of residence, at the Santa Casa da Misericórdia CAT of (...). Given the fragility of the state of health, the father accepts the application of the measure (...)"

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

14 - A Process for the Promotion and Protection of Minors was initiated in the Family and Minors Court of (...) in (...), and on that date an order was issued that applied the precautionary measure of urgent residential care to children YG2 and YG3, and they were welcomed in the CAT of (...), and to the YG1 child, the support measure with the father, for a period of 6 months, until the best referral for these children is decided and while the parent's disabling health problems persist.

which led to the children's admission to CAT, and measures to support young people.

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, the household currently 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 the CAT.

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 YG1 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.

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#### **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 the CAT were enough to provoke behavioral changes in the youngest children of the requested person;
- After leaving the CAT and handing it 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;
- The situation of (...) 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;
- (...) would have to be admitted to a hospital in order to receive the care they need; 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 yet :

- 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, (...), 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 in Shanghai where he studied asked his parents to sign a waiver before leaving, 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.

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### 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 included) – 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 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 witness A., a teacher at Colégio da (...), in (...), was revealed, insofar as the educational establishment has been attended by the defendant's eldest son, YG1, since the 2020/2021 school 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** .

Witness S., a lawyer in the district of (...), mentioned that the defendant was presented to him in 2019, on ..., through an association

supporting Chinese emigrants, stating that the defendant had 2 houses, one in the ( ...) and another in (...), which was isolated in the city, only speaking the English language; 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.

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

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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.

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*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 non-verification of the **extradition** assumptions ”, 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 ( [1] ) .*

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### **3. Legal basis**

**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 of not being 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, whereby 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 relating to international cooperation in criminal matters (Law no.

**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 (n.º 24) stating that “ *the court that will try her will not impose a sentence above life imprisonment (including life imprisonment)* ” (it is evident that it results from the 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 contacts were established between the communication channels provided for in the Treaty on **Extradition** concluded 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 check 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 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. Furthermore, 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 ( [2] ).

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 **HZ** 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 ” – condition for the admissibility of the defendant 's **extradition** .*

And as for the possibility of applying a **PENALTY OF INDEFINITE 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 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 rule (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, raises funds by fraudulent means, if the amount is relatively large, shall be sentenced to a determined prison term of not more than 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 shall 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 or confiscation of property .*”

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.

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.

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***b) Refusal of Extradition for Humanitarian Reasons :***

the art. 4th, al. b), 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 facts that he claimed, let's see what he managed to prove:

- The extradited woman is married to a Chinese citizen, and has 3 children, aged 15 and twins aged 3, the youngest of which 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 severe diabetes and dyslipidemia ( [3] ), 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 19.4. and 16.6.2021, 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 appropriate way, until her health condition worsened, and she was hospitalized between 13 and 14.6, leaving her 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 at CAT 16.6, leaving at 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 adequate 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 person'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 CAT 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.* ” ( [4] ).

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 to 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, whether 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 runs terms in **China**, will be sentenced, and whether it will be sentenced to effective imprisonment.

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** does not constitute 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 motivates 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 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.

Which is completely unacceptable.

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

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### III.

#### Device :

In view of the foregoing, the judges of the criminal section of this Court of Appeal of Coimbra agree to:

**- Authorize the **extradition** of HZ 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** .**

No costs (art. 73, no. 1, of Law 144/99, of 31 August).

After transit, issue and issue warrants for the detention of the extradited woman, in order to guarantee her delivery to the requesting State.

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*(Processed and fully revised by the rapporteur, the first signatory)  
Coimbra, January 19, 2022 Ana Carolina Cardoso (rapporteur) Elisa Sales (deputy) João Novais (deputy)*

[1] - Cf., by way of example, Ac. of the TRL of 11.28.2019, proc. 499/18.9YRLSB-9, at [www.dgsi.pt](http://www.dgsi.pt). [2] - V.Ac. of the Supreme Court of Justice of 4.22.2020, proc. 499/18.9YRLSB.S1, at [www.dgsi.pt](http://www.dgsi.pt). [3] - Abnormal blood lipid levels, considered a risk factor for the development of cardiovascular diseases. [4] - Cf. the Ac. of the Supreme Court of Justice of 4.23.2020, proc. 498/18.0YRLSB.S1, available at [www.direitoemdia.pt](http://www.direitoemdia.pt)

, which focuses on a situation similar to that of the present case; this edge cites, in the same sense, the following judgments of the same Court: of 1.11.2018, proc. 1331/17.6YRLSB.S1, of 1.7.2016, proc. 3/15.0YRLSB.S1, of 8.8.2014, proc. 364/14.9YRLSB.S1, of 5.3.2012, proc. 205/11.9YRRCBR.S2, and of 11.16.2017, proc. 1321/17.9YRLSB.S2.

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