Extradição nº 2421/1-20

BARLAVENTO RELATIONS COURT

Judgment No. Q S '/ 2020/2021

They agreed, in Conference, in the Barlavento Court of Appeal:

I - The Public Prosecutor's Office at this Instance, under the terms of 0 n 5o0 ° arnt °. 2, of Law No. 6 / VIII / 20 1 1.1 of 29 August, promoted, at the request of the United States of America, Requesting State, the fulfillment of the extradition request of Alex Nain Saab Moran, a citizen of Venezuelan nationality, a native of Colombia, duly identified in the file, provisionally detained in Prison of Comarca do Sal, with a view to the rpriminal procedure and trial for 1 crime of Conspiracy to commit money laundering, in violation of Title 18 of the United States Code, Section 1956 (h) and 7 crimes of laundering of monetary instruments, in violation of Title 18 of the United States Code, Section 1956 (a) (2) (A) and 2, for a total of 8 crimes, in a proceeding in the State of Florida, Southern District, imputing to the extradited the following facts:

a) Since 2011, after gaining very close friendship with a former South American politician, who introduced him to various authorities of the Venezuelan Government, together with several conspirators, he got in touch with members of this Government, to build housing for the population of low income;

b) Starting from there to enrich themselves illegally, in order to obtain commercial advantages, including the approval of false and fraudulent documents related to the import of goods and construction materials;

1 Diploma to which all the mentioned devices will belong without express mention of the law

c) And access to the foreign exchange exchange system controlled by the Government of Venezuela, under the control of CAD two I, VpI to ensure that payments should be made in US dollars, based on false and fraudulent invoices and documents for products that had never been imported into Venezuela.

d) At that time, the extradite and his collaborators, including Pulido Vargas, his partner, signed a contract with the Government of Venezuela, through a company of its own and under its control, to build housing, which never was, as well as for the import of goods and construction materials, having made numerous payments, to corrupt members of the Venezuelan government and other officials of various departments to ensure approval of false documents and invoices, goods that never imported into Venezuela;

e) Between March 2012 and December 1, 2014, they generated electronic transfers totaling approximately US $ 350,041,500, FROM BANK ACCOUNTS IN Venezuela, belonging to him, through accounts correspondent bank accounts in the United States, and proceeding to bank accounts abroad, which I had there, having also paid to several employees at Flóridc, part of the profits obtained through the referred scheme;

f) The facts that are the subject of the lawsuit, which run in Florida, are part of the criminal offenses provided for in Title 18, of the State Code. 'i United, Section 1956 (h) je Section 1956 (a) (2) (A) 2 and re activates the Conspiracy to commit money laundering and die nstruments monetary damages, crimes foreseen and punished by the Law against the practice of corruption abroad, 1977, Title 15 of the US Code, section 78dd-1, et seq (FCPA) and (18 USC & 1956 (h)) ".

two Foreign Exchange Administrative Commission

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In the administrative phase of the process, Exma issued a feasibility order for the extradition request. Minister of Justice, according to the order issued on pages 146 verse and 147 of the file, in the following terms:

"On June 12, 2020, at 11:35 pm, at the Amílcar Cabral International Airport on the island of Sal, the Cape Verde Judicial Police, through the Department of Criminal Investigation of that island, proceeded with the arrest, with a view to extradition, of ALEX NAIN SAAB MORAN, citizen of Venezuela and Colombia, against whom there was an international arrest warrant issued by the Court of the ^ United States of America, Florida District, with "Red Notice" at INTERPOL

At the origin of the request is the fact that the extradited person has a case pending in this Tribune ^ and is accused of susceptible facts integrate, according to the law of United States, one conspiracy crime for money laundering and seven crimes for money laundering.

It is a crime also provided for and punishable under our domestic law, in articles 291 of the Penal Code and article 39 of Law no. 38 / VII1 / 2009, of 27 April, a. by 120 / VIII / 2016 of 24 March, which establishes measures to prevent and suppress the crime of laundering of capital, goods, rights and values, with prison sentences of miniar limits those greater than 1 (one year).

All the facts imputed to the now extradited occurred in the United States of America, District of Florida, which is why the competent jurisdiction for the investigation and prosecution of such crimes It's *State requesting extradition.*

The request, according to the opinion of the Attorney General's Office, is based on the United Nations Convention against Transnational Organized Crime, UNTOC, approved for ratification by Cape Verde through Resolution No. 92 / V / I / 2004, of 31 of May.

In accordance with Article 16 (7) o UNTOC Convection, "Extradition

will be subject to the conditions provided for in the domestic law of the requested Estadp Parte or in Treaties of e> applicable tradition

Since between Cape Verde and the United States there is no Extradition Treaty, the analysis of the request was made in line with the J Ç ç Q O t nditions provided for in Law No. 6 / VIII / 201 1 29 August, approving the principles of international judicial cooperation in criminal matters.

Pursuant to paragraph 4 of Law No. 6 / VI11 / 2011 of 29 August, which approves the general principles of international judicial cooperation in criminal matters, the forms of cooperation envisaged? in article 1 of the same diploma, including the extradition, provided for in paragraph a) of paragraph 1 of article 1 - "are governed by the rules of international treaties, conventions and agreements that bind the Cape Verdean State verdean and, in its absence or insufficiency, by the provisions of the present diploma ".

Considering the favL opinion of the Attorney General's Office, it is understood that the requesting State has offered guarantees under the terms of articles 6, 7 and 8 and 32 of Law of Law no. 6 / VIII / 2011, of 29 August and article 38 of Constitution of the Republic, that is, extradition has not been requested for ethnic or religious political reasons or for an offense of opinion, for a crime that corresponds to the death penalty in the requesting State or to a struggle that may result in irreversible damage to the integrity of the person or has perpetual character or indefinite duration to the penalty or security measure and whenever, fundamentally, it is admitted that the extradited person cannot be subjected to torture, inhuman, degrading or cruel treatment and the extradited person will be extradited to a third country

s.

Considering that, the request is properly instructed in the terms of articles 23 and 44 of Law no. 6 / VI11 / 2011 of 29 August and respects the relevant Constitutional rules, and there is no reason to believe

refusal, the request for extradition of ALEX NAIN SAAB MORAN, granted by the competent authorities of the United States of America, under the provisions of paragraph 2 of Article 48 of Law No. 6 / VIII / 2011, is granted.

29 th of August, which regulates international judicial cooperation in criminal matters, and the process must follow its terms ".

The extradite, at the time of the interrogation, opposed extradition, claiming that the facts attributed to him by the requesting State do not correspond to the truth. In addition, he alleged that when he was arrested he was traveling as a representative of the Government of Venezuela, although, according to him, with passports ordinary, because O passport diplomatic stayed at Venezuela, and that he was going to Iran to seek goods of first necessity for the government of Venezuela.

Notified under the terms and for the purposes set forth in art. 0 55 ° of the LCJI, to present his defense, the extradite presented a request and filed a written opposition 3 to the extradition request, as shown in pages. 167 to 197 of the file, which is here reproduced in full, in which it alleges defects in the process.

In turn, the process was with the Public Prosecutor's Office at this Court to collect what was convenient and then to present their allegations. In response, the MP presented them, in response to the request for deduction from the written opposition, presented by the extradited, as stated in the files, on pages. 221 to 230, which is also reproduced in full here. However, the lawsuit that went to the STJ with an appeal

extraditing, it was decided to partially grant the appeal and, consequently, annulled the process from the omission of the notification.

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extraditing to present the proceedings their final arguments, observing the will follow
resulting from the law.
Therefore, after the process was downloaded, and in compliance with the decision in this TRB,
compliance with the provisions of Article 56 (2), the process having
with a view to the extradite's lawyer who presented his allegations, set out in the records of pages 85 'to 865,
and attached 5 documents to the records, which go to pages 942, allegations that are also reproduced here in
Integra.

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The process was aimed at the Exmos. Honorable Judges Assistant Judges.

II - Sanitation

Before proceeding with the appraisal and decision of the process, it is necessary to identify,
analyze and resolve, previous issues and nullities raised by the defense of the Extradite, both in
the presentation of the option to extradition and in the final allegations.

Therefore, it is firstly necessary to answer the question alleging defense, of the *was going* through the
probable nullity remedy that occurred as a result of failure to
personal extraditing ped of extradition and the decision on his admission, »
arguing that this constitutes omission of a procedural phase and
Extradite's intervention, insurmountable ability under the terms of article 151 d) and
g) CPP, applicable by article 42 ° n ° 2 of the LCJIMP, which follows yours
requirement of pages. 164 to 166 with the records »

In relation to this issue, it seems to us that it is not right, since this Court has pronounced itself when
it, pages 286 of the case file, in the sense that, after the admission of the extradition request,
notification of the extradite was ordered, in the person of his agent.

Regarding the alleged nullity, it should be noted that the rules of articles 50 and following that regulate the judicial phase of the extradition process, do not impose formalities to be followed as required by the extradite, so, since there is no provision in the Law of the Cooperation that formally notifies the extradited person of the extradition request, let alone to be notified in person, and no procedural stage has been overlooked.

According to the Law under analysis, the notification of the extradited person is mandatory under the terms of article 53 n ° 4, right after his arrest and with the warning to be accompanied by a lawyer constituted by an interpreter.

The Law does not impose that, after the extradite has been heard for the purpose of validation and maintenance of the detention, which was the case in the case file, that it be heard again in person, after receiving and forwarding the request for extradition.

Dal qu ^ also does not seem to us that there is a gap to be integrated by the criminal procedural law. In fact, the rule in Article 46 (3) states that the judicial phase "is *the exclusive jurisdiction of the Supreme Court, (ie, Court of Appeal), and is intended to decide, with prior hearing of the interested party, on the grant of extradition*.

■ io because of its form and background conditions, with no evidence of the facts imputed to the extradite being allowed ".

The extradited person's hearing results, as provided for in article 54, following the presentation of the detainee, elucidating the numbers 1 to 5 of the referred article, the purposes of the hearing a. where all the rights of the extradited person are presented, the same being clarified on the request for

extradition, consents to it and is asked whether or not to file an extradition, as well as on the terms in which it should do so, including the faculty to resign the benefit of the specialty rule, under conventional law badlands applicable to the case.

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In the specific case, at the hearing of the extradite's hearing, to validate the provisional detention, the legal formalities were completed went to him asked if he consented to extradition and replied that no, in addition to his fundamental rights that were explained to him and why he was being detained, in the presence of a constituted lawyer and interpreter for the purpose indicated by him, as well as by the Public Ministry, at this Instance .

Although he was heard in the detention phase, this already constitutes the judicial phase in which the extradite is confronted with the terms of the extradition process and he responds, as Je can verify, under the terms of that sentence, which is recorded on tape audio.

Thus, once the request for extradition was admitted, the AC constituted to vogue oppose that request was notified.

On this matter you can see STJ ruling No. 58/17 of 01 of a whose extract is in this case, in like and STJ ruling, No. 57/2020.

So, as already mentioned, it does not follow from the Cooperation Law that the extradited person has to be personally notified of the request for extra admission and that he has to be diction and heard again by the Tribuna , very although he mentioned that the right to be notified personally would result from similarity with certain situations • provided for in the Pe Process Code ial, in that the defendant's personal notification is required, and with the argument that the CPP is of subsidiary application

In the specific case, there is no place for subsidiary application of the CPP, do not it is before any gap to be integrated by the criminal procedural law, as the extradited intends. Because we have to take into account that the tion of extradition process, is specially regulated by the LCJI, which, as already mentioned, does not provide for what defends the extradite's defense, that is, it does not regulate the personal notification of the extradition request nor does it regulate a

second in person hearing of the extradited person before the Court, in which case there is no place for the subsidiary application of the CPP, so there is no reason for it.

Alude warns the defense that the non-personal notification of the extradited and the notification of the agent is enough, violates the articles of the CRCV and is therefore unconstitutional.

It also seems to us that there is no reason to defend the alleged unconstitutionality, insofar as, in passive extradition, the State re
eq/hatrriid does not imply any criminal responsibility and does not judge the
acce-rrcce guilt, with a view to sanctioning the extradited. The extradition process does not aim to assess the verification du not of the facts denounced against extraditing, as this is the task of the Courts of the requesting State, where you must be guaranteed all the defense guarantees regarding the facts for which you may or may not be convicted.

Once again to mention that the invoked nullity, due to alleged omission of personal notification of the extradition request. and in person's hearing
Extraditing before the Court after the admission of the extradition request does not proceed.

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Notified, under the terms of article 55, paragraph 1, for the deduction of the opposition, the defense of the extradited person presented the written opposition request, set out on pages 167 to 197 of the case file, dividing the application into two parts entitled
such as "PREVIOUS DUESTÖES" and "OPPOSITION", although we understand that it results from the terms of the Law on International Judicial Cooperation in Matters
Criminal, iLei n ° 6 / VHI / 2011, of 29 August, in article 55 n ° 2, which, (" the *opposition can only be based on not being the detainee* 3 *claimed person, or not*
check in the assumptions of extradition ". And, it still results from article ^ 6 ° n ° _3-

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of the same Law that *"The jud phase* Ç *ic* P *ial (...) with no evidence on the facts imputed to the extraditan* r *The d* t *O".*

Now, according to the judgment No. 57¿000 of the STJ, it was decided to provide partial of the appeal filed by the extradite, in view of the TRB Judgment No. 42/2000, and consequently, the process was partially annulled from the omission of the appellant's notification to present his final allegations, rvando- followed by the procedure resulting from the law, the STJ in that judgment analyzed most of the issues alleged by the appellant in his written opposition request.

However, since the extradite raises the question of the absolute incomp of this Court age and the national Courts, as well as unconstitutionality for breach of the rules of the adversary, address these know us issues

But before we get into the aforementioned issues, we understand that we must make a reference to the public issues and the opposition, alleged in the defense request.

Regarding "• PREVIOUS QUESTIONS "raised by the defense of the extraditing, the same refers that there is Integral falsehood of the p arguing that the facts rocesso and acts imputed to the extradited, with o be the request signed by the District Attorney of the Republic as well as the documents delivered by the USA, are all false, which does not correspond to the truth because, it is the Extradited person claimed, so much so that he himself answered in the interrogation records, that he knew that the USA was in its mishap, that there was an accusation running against him in the USA and, on the other hand, the presuppositions for extradition are fulfilled, that is, that there is criminal procedure running its terms in the USA, for the committing of serious facts against the extradited, and there is a request for extradition by the requesting State in relation to the extradited.

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Although the defense of the Extraditant believes that due diligence should be carried out in order to ascertain the merits or reasons for the extradition request, following the documents presented and the enrollment of witnesses, it was understood that these were delaying proceedings, as they were such steps taken, they will take place as well as their discussion in criminal proceedings that run their terms in the USA, the requesting State, and

not before justice

Cape Verdean.

In relation to this question, it follows, pursuant to Article 43 (3), that it is not admitted i *"No proof of the facts imputed to the extradite",* and Article 55 n ° of the LCJI states that, " *The opposition only pri based on not being the detainee*

person complained of or the extradition assumptions are not met ".

The defense invoked the Unconstitutionality of the rule in Article 55, No. 2, of the LCJI.

On this issue, we will resume your analysis in light of the allegations in which the defense of the extradited person resumes this when it alleges, " *The plaintiff's rights: right to ample defense, right to appear at trial and the Principle of Contradictory ".*

As for the question of Interpol and the rules in which it claims that *"(...) if extradition is requested, the national authorities, before acting and as a precondition for authorization to comply with the request, after authorization for the beginning of police operations, they will have to determine whether or not there is an Extradition Agreement with that State; (...) that the* Cape Verde's accession agreement to INTERPOL is not published in the newspaper o

of the State, so it cannot be applied by the Courts, not

impend there is also a duty on the National Police to comply with the regulations of that

organization, nor can it " *act ^ motu*

based on goodwill cooperation to arrest, detain or perform a police act resulting in the restriction of national or foreign rights to freedom and security; (...); that the red alert was only later, on June 13, placed on the Interpol system; (...) detention in the specific case constitutes a more elementary violation of the Appellant's right; (...) the arrest of the Extradite and its maintenance violates the provisions of article 269, paragraph 1 al. b) CPP ".

Regarding the alleged question of whether or not there is an extradition agreement between States, Article 39 *establishes that it is lawful for criminal police authorities to detain individuals, who are wanted by competent foreign authorities, for the* extradition, provided I have official information. However, if not both Member States of Interpol, judicial cooperation between them is required by the rules established by the law of international cooperation.

According to Prof. Wladimir Brito, his opinion in the file presented by the defense, from the point of view of the Internal Law of the State of Cape Verde, writes that, *"(...) INTERPOL is an International Organization of a technical nature, adherence to its constitutive act does not need ratification, as the Cape Verdean State*

adheres to a constitutive pact (...) ".

In the case of the case, even if the State of Cape Verde was not a member of Interpol, under the CJI Law, it was lawful to order the detention of the extradited1 taking into account the stipulated in the referred article, article 39, which, once again, is described and which stipulates, " *It is lawful for police authorities criminal carry out, under the current criminal procedural law, the detention of individuals who, according to official information, namely from INTERPOL, are sought per authorities competent foreign for It is made in procedure or serving time for facts that are notoriously justifying extradition ".*

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Now, in the specific case, the authorities of the Cape Verdean criminal police, standing in possession of official information that the Extradite was being sought

per authorities competent foreign for effects in criminal procedure, for facts that clearly justified his extradition, which is why, they arrested him and presented him to the judiciary that validated the arrest for being lawful.

In the concrete case, the law of criminal police internal law allows the authorities of any formal cooperation will take effect, without request from the State applicant for the provisional detention of foreign citizens who are in the national territory. Since the authorities

national criminal police officers have official information, namely from the Interpol! that people are wanted p Dr there are facts that justify the your ex ▪ tr x tion, detention not directly request takes place, even if there have been no arrest warrants and regardless of the existence of a request made by the competent authorities of the requesting State.

What justifies the lawfulness of the detention, along with the other requirements indicated in article 39, from the outset, is that the criminal police authorities are in the position of official information, which can reach their knowledge directly through Interpol, or a foreign sword, and that this information existed at the time of arrest

io and in this case it was based on this information that the criminal police went to the airport and arrested the foreign citizen.

In the present case it is indisputable, inasmuch as it is the extradite himself who claims to know and was in possession of information that there was an international investigation against him and that there was an accusation running against him in the USA. Now, with the authorities of the criminal police Cab o-Verdiana na. possession of official information that the Extradited | was being sought by competent foreign authorities, for and

criminal procedure by those who manifestly justified the extradition, your detention ^^

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lawful, under the provisions of article 39 of the LCJI. Even in the absence of a formal request from a foreign entity in this regard, provisional detention was lawful, since unsolicited detention does not have its validity dependent on the existence of an arrest warrant, the mere reference to the existence of a arrest warrant may be sufficient, not requiring it to be sent or displayed at this stage, depending on the possibilities.

This does not mean that the existence of a warrant of arrest,

authority that issued it and the grounds that

justify it. But, as mentioned, its existence at the time of detention not directly requested, is not established by law as a condition for the validity of deprivation of liberty.

In fact, as can be inferred from the provisions of Article 23, paragraph 3, *"THE competent authority may* ex / g / r *that an incomplete formally irregular request is modified* or *completed, or without prejudice to the adoption of provisional measures, when they cannot wait for regularization ", in*

so it is concluded that the request may be irregular and even incomplete at the time of detention.

It is extracted from the case, which had an international arrest warrant issued by the US District Court for the South Florida District, with “Red Notice "", registered at Interpol against the extradite, who placed the *“Individual Report, noio daiiai 12 June 2020, with“ n ° 2020 / 39603-1, INTERPOL case reference, for facts committed*

since 01-11-201 ^ The 9/30/2015 ", with at descriptions of extraditing, attaching your photograph, on the website. On the same day at night, following that official information, issued by Interpol, and in the

possession of the same information, the Criminal Police went to the

Amílcar Cabral International Airport, where the aircraft was for refueling and where the extradite traveled, with the pilot of the aircraft presenting the crew list

passengers and passengers on board. Upon verifying that JS í-Ss

extraditing was part of the passengers, the criminal authorities complied, in agreement and in possession of the information about the criminal facts that hung against the extradited, official information from Interpol without the need for intermediation of a national arrest warrant, in the scope of international cooperation, the mesrpo was detained with a view to his extradition.

Hence T does not seem right to us that we intend to apply, in the first line, the rules of the Code of Criminal Procedure, in relation to the application of measures of personal coercion, since it is not a measure of coercion, preventive detention, under the terms regulated by law criminal procedure, but rather detention with a view to extradition, the law of cooperation being applicable, and

establish as subsidiarily applicable, the available of the Criminal Procedure Code, which must be applied with the necessary adaptations, always taking into account the established in the Treaties international conventions and agreements that bind the State of Cape Verde as well as the rules contained in the Law of Judicial Cooperation in Criminal Matters.

Mention although for the validation and maintenance of detention for extradition, the targeted persons are required to be sought by foreign competent authorities to effect criminal proceedings or penalty, for the practice of fac those who justify extradition, the rule being detention, as stipulated in articles 38. 6 and 41 of the Law cited. Therefore, the alleged question must be rejected.

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In the part entitled "OPPOSITION", the defense of criminal proceedings against the extradited, pursuant to art. 0 9 O. It alleges the defense of the extradited that PRÇ. indicates how the period of committing the acts of the extradited to the years

Examining the facts, found extinct by the same

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2012 to 2014, and indicates the 5-year limitation period, which occurred at the end of 2019 (...). That according to the provisions of the US law, the deadline for

5-year prescription, counted from the date of the facts (December

2014) and up to the date of notification to the Extradite of the extradition request from the USA and the order of admission feasibility of the request by the Court of Appeal

Windward.

In fact, extradition will be refused if the procedure is

extinct or the prescribed penalty, either under the law of the requesting State or under the law of the requested State, which is not the case since the

against the extradited is not extinct, having

been the accusation handed down within the period of 5 years stipulated in igo dos U.S.

The United States Code, elatively to the subject of the prescription, ro Title

18, Section 3282, orders that criminal prosecution be initiated, at the most years after the the five commission of the crime. The charges against the extraditand 3 went rendered on July 25, 2019, the first of which was attributed to the extradition of a crime that lasted until September 2015, and the second charge of the extradition of a crime that occurred on October imputed 29, 2014, for accusations was made within the prescriptive period , that is, the facts occurred until that the September 201'5 and the charges against the extraditing place in July 2019, that is, ai

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before the prescription period occurs (see pages 81 of the case file). On the other hand, the extradited person was notified of the extradition request, by the TRB, i on July 8, 2020, cf. pages 163 of records.

Why I don't lie Another criminal proceeding against the extraditing, and the action was handed down within the 5-year period stipulated in the United States Code.

Invokes the extradited Immunity from Jurisdiction for being a Special Envoy, benefiting from immunity from criminal jurisdiction and inviolability, so that the Cape Verdean Courts are incompetent to hear the case.

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However, despite the arguments alleged by the defense of the Extradite, based on the United Nations Convention on Special Missions, as well as on the customary international law set out in the Convention, to establish as an obligation of the State of Cape Verde, the recognition of the status that arrogate, it is proven in the records that the condition of the Extraditute is that of a common person, portado.r ... d..e ... d..o..is ... p..a. .ssl a. ordinary sizes., .. c. om the duo

nationality, being a native of Colombia and a citizen of Venezuela, who was traveling in possession of these two ordinary passports, when he was detained by the Judiciary Police, having not presented at the time any document from which the Special Envoy status could be withdrawn, that is, at the time of the arrest he was Special Envoy status, no bringing any evidence that could confirm this, nor had he asked the State of Cape Verde to be a Special Envoy: al, aliás é o que se retira of the provision in Habeas Corpus Judgment No. 28/2000.

Conforijie COnsta of the Judgment referred to [3] "(... J *¿Indict that the Claimant has been entrusted with a Special Mission by his Country, hence Green, even though he feels bound by the provisions of the Convention [4] that reflects customary international law, has to automatically recognize that status.*

To better understand what is said, it is important to bear in mind that under the terms of Article 1 of the Convention, the "special mission" is defined as

41 1 temporary mission, representing the State, which is sent by one State to another State wiih the consent of the later for the purpose of dealing with on specific

7 lestions or of petforming in relation to it a specificatfaieskt "a.sk".

Having given the definition that is transcribed, don \ le sob'remsaseaisuom bre that is the consent of the two States, and for the purposes of immunities, the statute d ^, special envoy that claims the Claimant would, in principle, only be legally relevant

[3] See Pages 24 to 27 of Judgment No. 28/2020 (Habeas Corpus)

* Understand United Nations Convention on Special Missions

for the two states present: Venezuela, as the State that sent it (sending State), and Iran, as the State that accepted to receive it (receiving State).

It cannot, however, be said that a third State, such as Cape Verde, in whose territory the plane that followed made a stopover for refueling, would be at the start and in all mud, indifferent to this special status of the Claimant.

In fact, having verified certain assumptions, the Applicant could see its status recognized by Cape Verde, as a third state, as is clear from the Convention article. (...), the recognition of the status of special envoy of the RequerenIt by a 42 "from third State, for which it was in transit, depends on the verification of certain ones that are indicated in n "4 of article 42". That is, that State is only obliged to observe the inviolability and immunities of a special mission, having been requirements previously informed, through a visa application or notification, of the transit of the person (s) on mission and has not nstittd on objection if there is

Therefore, it is clear that the special envoy status cannot result in contrary to that seems to support O Applicant, only of a unilateral declaration by the State that says you sent him on mission (sending state). It also depends on assent, either from the receiving State, or, if that situation occurs, from the State through which you will pass in transit (third state).

(...)

Now, it has not been proven, or at least it has not been proven until now, that in what touches the The State of Cape Verde verified the assumptions indicated in article 42, i Convention, on which recognition of the status o 4, da of type I envoy depends, for the purpose of enjoying inviolability and immunities before the Cape Verdean Courts ".

In other words, even if he was entrusted with a special mission by his country, Venezuela, as he claims, and traveled as a Special Envoy, the provisions of the Convention referred to in defense of the Extradite do not automatically impose that the State of Cape Verde should recognize the status of special envoy, as, for this purpose, he should have been previously informed of the extradite's transit, either through a

notification or through a visa application, which did not happen in the process.

In the case the concrete and as can be inferred <1 the cases, the Extradite does not he has proved to the Barlavento Court of Appeal, until now, that he has been recognized as a special envoy. At the time of detention present the two ordinary passports, as mentioned above. He did not prove this status at the time of his arrest, nor has he done so far, as he does not know the decision of the State of Cape Verde as having assigned him the status of Special Envoy that he so requires.

Now, being an ordinary citizen, since the status of special envoy has not been recognized, the Cape Verdean courts are competent to hear the case under analysis and decide the extradition process, and it is not within the jurisdiction of the Courts to recognize the extradited court. Special Envoy status, as required. The intended, Special Envoy status that is so arrogant can only be recognized by those who have the right, and certainly not the courts.

In fact, until now, there is no evidence in the process that the State of Cape Verde, as a “Third State", has co-felt that the Extradite should pass through its territory with the status of Special Envoy, having, in the administrative phase of the extradition process preferred to exercise its sovereignty, authorizing the beginning of the judicial phase of the international cooperation process.

As the Extradite's own defense alludes to, 1, Venezuela does not invoke the 1969 Special Missions Convention or the rules of law ' Customary international law reflected in these provisions, since Cape Verde is not part of the 1969 Special Missions Convention

On the other hand, it recognizes that Cape Verde has not been was going d d.1 the with before the transit of Alex Saab, member of a special commission),

fur what not can bene icíar gives rule of Right International Customary conferred in art. o 42, n ° 1 and that the extradited ion is a diplomatic agent and therefore cannot benefit from the Vienna Convention on Diplomatic Relations of 1961, although, at this stage of the process, a photocopy of the diplomatic passport is already in the process, which in the meantime has not gives him diplomatic status.

In form what, not you being assigned immunity diplomatic and Personal inviolability as a special feature of a foreign State, the Courts as well as the other Cape Verdean authorities, have jurisdiction over the matter. In the specific case, the TRB is competent to, acting as a Court of First Instance, decide on the matter under analysis.

Having been detained with a view to extradition, the law determines that the Court of Appeal is competent to resolve the issue, as well as the other Superior Courts, in the second stage of appeal.

So the alleged question of the incompetence of the Cape Verdean Courts is unfounded.

It should also be noted that this issue, also taken up by the defense of the extradited in view of the final allegations, does not proceed, watching! thus, it is incumbent upon the Courts of Cape Verde to decide the extradition process, since when he was detained at the Amílcar Cabral International Airport, he did not have the status of special envoy and until this moment there is no information that he has been recognized for. a claim that arises, that of a special envoy.

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The defense of the extradited person invokes the principle of reciprocity, under the terms of articles 3 o and 6 o No. 4), arguing that, " *For the law, international cooperation in criminal matters falls under the principle of reciprocity (Article 3.1) and the request for cooperation can be refused when reciprocity is not guaranteed.*

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(...) ■

However, despite its arguments, Article 3 of the LCJI states that, -1. THE international cooperation in criminal matters enshrined in the present diploma is based on the principle of reciprocity. 2. The Ministry of Justice requests a guarantee of reciprocity if circumstances require it, it can provide it to other States in the Unites of the present diploma. 3. The lack of reciprocity does not preclude the satisfaction of a request for cooperation, provided that such cooperation: a) Is advisable due to the nature of the need to fight against serious forms of crime; (...)

Article 6 o, No. 4 states that "O *request for cooperation is still refused when reciprocity is not guaranteed, except as provided in paragraph 3 of article 3 on.*

The Government of the United States of America has offered to provide the same type of assistance in the event that an identical request is made by the Government of Cape Verde, despite the limitations imposed by the extradition and immigration laws of the United States, does not find itself in a position to guarantee reciprocity (pages 39 of the case file). However, this is not an impediment to cooperation, as, according to the provisions of paragraph 2 of the provision of the law in question, it is the Ministry of Justice that " *requests a guarantee of reciprocity if the circumstances so require* ", being able to dispense with it in the cases referred to in the various lines of art. o

3 o, No. 3, namely when it is shown is advisable due to the nature of the fact or the need to fight certain serious forms of crime, al. a) the provision in question.

Despite the vast doctrine presented by the defense, it seems to us that the LCJI is clear and does not leave any doubts, as it sets out in article 3 o, No. 3, that *lack of reciprocity does not prevent the satisfaction of a cooperation request, provided that*

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need to fight coo nstr.arecaedhanselearlaed s serious crime the nature of the fact or the

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In the specific case, according to the Minister of Justice, c | The request presented refers that the Extradite is accused of having committed crimes, which is in line with al. a) of number 3 of article 3 o, in which case, extradition is granted. The Minister of Justice's decision, which is a political act, is not subject to judicial review, as the defense intends. So, once again, the question raised by the defense does not proceed.

*

On the other hand, it invokes the principle of specialty, cites Article 17 of Cooperation and develops the law of the principle, narrating its intricacies, so that "the *extradition request was not instructed on the basis* conclude *of a formal declaration of assurance that the person claimed will not be judged for facts other than those that justify the request and that precede and contemplate them "; (...)" In the present case, the the country's authorities, as in compliance with reciprocity, did not offer other guarantees, besides the minimal, insufficient, as already criticized above.*

lexist

formal guarantees from the American authorities, that the extradited not gone be convicted in other states of the United States for other crimes. This guarantee is one of the requirements for the extradition request to be accepted 1.

The guarantee of the principle of specialty presupposes that extradition is always granted on the condition that the extradited person will not be judged as a fact different from and prior to that for which it was granted, nor be subject to penalty diverse that imposed on the conviction for which the extradition was granted.

It should be considered as an existing rule to guarantee the extradited, thereby preventing the requested State from pursuing the Requesting State or do serving sentences for the extradited for a fact different from what was the basis of the extradition, thus constituting an obstacle to the consummation of an international fraud.

In the sale, all the explanation of the defense with regard to the principle of specialty is correct, but its dissertation on the lack of guarantee formal request from the Requesting State, the USA, in terms of extradition, does not correspond to the verdict. The requesting State, when sending its formal request for extradition, included the guarantee that the defense "requires". There is an express and formal declaration in the records on this matter, where the principle of specialty is safeguarded, offering formal guarantees that it will not will ether, prosecute or punish the extraditing for any other offenses in addition to those contained in the extradition request, and that the extradited does not will be re-extradited to third party state

It appears in the declaration expressed by the United States, submitted through its Ambassador in Cape Verde, on pages 540 to 555 of the case, so the alleged question does not proceed.

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It invokes negative cooperation elements, namely political and ideological convictions.

According to the defense, "the *extraditing is supported by the Government of Venezuela, and carries out missions in the name and on behalf of Vene zuela; the extradition process it is part of the efforts of the USA to weaken the regime of the President of the RBV; the criminal proceedings initiated against the Extradite and the related extradition request are the most recent effort by the USA to interfere in Venezuela's internal affairs, (...); that there is, therefore, a reason to believe that the reason for requesting extradition is based on reasons of a political or ideological nature, which properly for reasons of criminal punishment, so the request for extradition must be refused ".*

Now, the defense intends to pass the idea that in practice even if I have committed the crimes for which they were asked extradition cannot be extradited because it is a persecution of the Venezuelan regime. At

political divergences between the USA and the RBV are public, are known, given the wide coverage by media outlets. For some time now, it has had great repercussions both in terms of communication and the social foreign or national level.

However, the basis for the extradition request does not deal with facts dealt with the political persecution of the Government of Venezuela, nor with the regime of the President of the RBV. The facts in the request refer to the extra Alex Nain Saab Moran, citizen jiting, from Venezuela and a native of Colombia, accused for facts linked to the practice of money laundering crimes, according to a law of United States, from which it can be concluded that the crimes for which he is persecuted are not of a political nature and am for political and ideological reasons, so the alleged issue does not proceed.

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The Extraditite argues, on the other hand, international human rights requirements, worsening of the procedural situation, because if extradited, he risks not benefiting from the fair trial ", in addition to the risk of being subject to torture, inhuman treatment, degrading or cruel.

Invokes questions relating to human rights, makes use of the International Covenant of Civil and Political Rights to say that people are equal before the courts and the courts is what guarantees entitles individuals to the right to judicial protection effective.

As for the alleged aggravation of his procedural situation, I do not think that he will proceed.

The extradited person claims that he will be subject to an interpreter that he does not know and may be appointed by the Court, as well as the lawyer. As is clear from common experience, we believe that it is not necessary for the extradited person to meet the interpreter, since the mission of the extradite is to translate the terms of the law what is transmitted to him and with a legal oath to perform these functions well. In fact, similar to any situation in which the offender is appointed an interpreter in

Any country. On the other hand, and as is known, the extradited person will be able to choose any lawyer for his defense, in fact as he has done so far, with national and international lawyers, of renowned prestige, without forgetting that there are large law firms in the USA specialized in the matter under analysis, and the Extradite does not run any risk of being imposed on him by a lawyer he does not trust.

The fact that he does not speak English is not a problem, as the brown Ana language is spoken by almost the majority of the US population.

Furthermore, the reports that he cites to allege the possibility of being subjected to torture, do not appear to have anything to do with the situation of the extradited in the face of the accusations that are attributed to him, so the question raised does not proceed.

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He also argues that, in relation to the sentence, he is in danger of being punished with a sentence of 160 years in prison, which results in a life sentence.

The extradite alleges that he is at risk of being sentenced to 160 years in prison by the Courts of the requesting State, taking into account the 8 crimes he is charged with, each being punished with the maximum sentence of 20 years, in other words, it runs the risk of being punished with a perpetual, unlimited or indefinite term, expressly prohibited by Cape Verdean law, so extradition must be denied.

Now, analyzing the abstract penal framework of the crimes for which the extradited person is being criminally persecuted by and O The, and contained in the Code of United States, none of them constitutes a penalty prohibited by our law, that is, of a perpetual, unlimited or indefinite character, as the defense intends.

Each of the crimes that the extradite has been charged with is punishable by up to 20 years in prison.

However, to have a different understanding, in the sense that the penalty applied to the total, the extradited, as presented, as materially equiv alent to a life sentence, the Court could always rely on Article 6 o n ° 2 al. b) and 16 n ° 16 of UNTOp, and request the Requesting State to provide the guarantee that the penalty will not be applied, which seems unnecessary because it is the State itself applicant who, as a precaution and anticipating any decision to that effect by the Cape Verdean Court, see join you a document to the file, on pages 540 to 555, where it appears that he will dispense with the prosecution of 7 of the crimes, appending the extradite to trial for only one of the crimes, for which he will only be tried by a criminal, and eventually sentenced to a maximum sentence of up to 20 years in prison.

So, the alleged question about the perpetuity of the sentence does not proceed.

*

It invokes Extraditing serious consequences for the person, in the terms of article 8 o No. 2, namely age, health status and other personal reasons. a

Now the extradite has completed 49 years old now in December i, being still a young man who was perfectly able to serve an effective prison sentence. In relation to the state of health, according to the order in force in the process, the extradite was unable to add to the documents documen could prove that he suffers from a serious illness that prevents him from being the ones that detained for the execution of the ex-radiation. It is said that he has autoimmune diseases such as hypothyroidism, tension and diabetes, which are controllable diseases and that anyone, like it is common knowledge, at this age, can acquire, but you must be provided with health care.

In relation to family leave, this is a rule in all cases where the person is subject to a penalty of detention, and does not constitute any impediment to detention for extradition.

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The Extraditite invokes the extinction of the criminal proceeding, alleging that the facts imputed to him were subject to criminal investigation and instruction by RBV and Ecuador and were filed.

Now, the facts for which the extradite has been accused were practiced in the USA. as it is removed from the documents attached to the file, namely sent
by the American Erpbaixada in Cape Verde. For this reason, having taken place in
USA, it does not seem plausible that another or other countries
competence to accuse the extradited person for the same facts and, moreover, to file the lawsuits. On the other hand, as can be inferred from the request for the defense of the addendum, the investigation that took place in Venezuela was not a criminal investigation, but an investigation of a political nature, so, improperly, once again the argument presented by the defense did not proceeds.

Once the issues underlying the request for opposition to the extradition filed by the defense of the extradited person have been finalized, let us enter the submitted request, the final allegations.

Notification for view in the proceeding, under the terms of Article 56 (2), to present his final arguments, the defense of the extradited person presented them, in time, as shown in pages 851 to 865, having attached documents to the case file.

The defense questions the following situations, which, however, in opposition to the extradition request have already been analyzed. We will approach them in the sense of completing what has already been mentioned) in relation to the opposition request.

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The final claims address the following items:

D Absolute incompetence of the Cape Verde Courts

2) Absence of a warrant

3) The guarantees allegedly taken by the requesting State;

4) The applicant's rights - right to ample defense, right to appear at trial and the principle of adversarial proceedings;

5) The alleged Convention Nations Convention Against Crime Transnational Organized — UNTOC, as the basis for the request for international cooperation.

1. Incompetence of the Courts

Regarding this item, regarding the absolute incompetence of the Courts of Cape Verde, the defense invokes judgment No. 28/2020 stating that it recognizes the Extradite with the Special Envoy, which does not correspond to the truth because what the agreement says is that , "(...) *what has just been said does not mean a practical and definitive impossibility for the Claimant to come to (er that intended status of envoy recognized by those entitled to, in the further stages of the extradition(...)".* And more (transcript) O *what "(...) is reaffirmed is that for now there is evidence in the process that the Cape Verde allowed the Applicant to pass through its territory special envoy status. with E without that consent, the Cape Verdean Courts Verdeans cannot recognize the status of Special Envoy to the Applicant, which means that he does not enjoy the inviolability and immunities to which he is based, based on the 1969 United Nations Convention on Special Missions.*

Therefore, the exception must be made to of incompetence of the Requesting Cape Verdean Courts ". order the detention of the

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Now, if he had been recognized as an extradite Special Envoy status by the State of Cape Verde, as it claims, the extradition process would no longer take place. As explained in the analysis of the written opposition request, the extradite does not benefit from the Special Envoy privileges provided for in the New York Convention on Special Missions of 1969. It does not benefit from immunization under the Cape Verde Jurisdiction, so, having been his Provisional detention was based on official information held by the national criminal authorities that he was persecuted with a view to

a extradition, and by the state applicant, it is up to the Barlavento Court of Appeal to resolve the issue regarding the extradition request.

Refers the defense that the ECOWAS Court has ruled, clearly and unequivocally, that "The *right to freedom and security, claiming that their Detention is illegal and violates your right to freedom (...) because you enjoy immunity and inviolability due to the principle of non-interference in the UN Charter and your status as Special Envoy. Since at the time of his arrest he was* The *perform a special mission in Venezuela's name, and it wasn't object of an arrest warrant or even a red alert from Cape Verde ".*

From meal go that in relation to the ECOWAS Court ruling, a dispatch in these records, which here is reproduced in full, on pages. 950 a 958, atr through which the defense complained to the TRB conference, having been rendered a judgment by him and already notified of it. To confirm that this Tribune is not aware of any decision given by the Court of Justice ECOWAS. In fact, what is known is what spreads through the communii "" - □ national and foreign social communication, as well as the document attached to the request submitted by the defense of the extradited, which, moreover, should have been mandaco unravel from the process. Furthermore, as stated in the dispatch in reference, since not even Cape Verde attended the

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Protocol that grants legitimacy to the ECOWAS Court on the issue of alleged violations of fundamental rights, the decisions of that Court, in this matter, do not bind Cape Verde.

The defense further states in its application that, " *However, as the Extradite alleged and claimed when he entered the national territory, he paid an entry visa. (Doc.03) ".*

In fact, it constitutes a new fact brought by the defense to the process, having been with the file an ide document that does not know the provenance, even though the pages. 928, refers to being a translation from Russian into Portuguese. It is not understood how the extradited paç or a visa at the entrance. Now, if the authorities

judicial authorities sought to extradite the plane -, --- with - m - - O - - he - le - the ga -, --- co - m ro is that

Is there a document with a visa to enter the country? None of the countries S contributions

ordinary people that the extradited three had with him on his provisional detention contain a visa to enter Cab o Verde.

So, since there is no official document proving what the defense wants, we can only say, once again, that the document presented, nothing proves, in the sense that there was consent from Cape Verde, from the enada or passage of the Extraditing the Cape Verdean territory.

Regarding the absolute incompetence of the CV Courts, it should be noted that the jurisdiction over judicial cooperation judicial proceedings in criminal matters is attributed, in the first instance, to the Courts of Appeal, as provided for in the International Judicial Cooperation Law, Law No. 6A / III / 2011 of 29 August and the Law on the Organization, Jurisdiction and Functioning of Judicial Courts, Law, No. 8ÍA / II / 2011, of 14 February. In this way, it is up to the TRB to practice the judicial acts referring to the judicial cooperation processes, namely referring to passive extradition. In conclusion, this issue has already been mentioned above.

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2. The non-existent warrant

It invokes the defense that “the *text issued by Interpol cannot be invoked and has no application in Cape Verde's legal system, as it was not neither approved nor ratified by Pariamehto nor published in the Bulletin Official ia Republic of Cape Verde, that is, it does not apply in the Legal Order internal. And that nothing prevents the Barlavento Court of Appeal right now confirm that Interpol texts do not apply in Cape Verde's legal system* and *that the extradited person, either by issuing a red alert or by any other provision of INTERPOL, could not have been detained under the constitutional provisions, article 277 ° 2 - the Constitution of the Republic of Cape Verde ". in*

It thus invokes a violation of constitutional provisions for all egal, present and future the purposes.

This question has already been analyzed in the opposition presented when it demonstrates if that the extradited did not special envoy item. Like referred to the extradite was detained on the basis of official information in the possession of the criminal police authorities and where it was said that the extraditing was wanted for having committed serious crimes in the USA. Oral even i that had not yet sent, there was the official information that authorize the action of the PJ for provisional detention, with a view to extradition.

Article 39 provides that “It is *does it permit the criminal police authorities to carry out, under the current procedural law, the detention of individuals who, according to?* ions *authorities, namely INTERPOL, are sought by competent foreign authorities for* ieni *serving time for facts that notably justify extradition* U *O".* d Per O

On the other hand, Article 23 (3) further provides that, *“The competent authority may* ç" *require that a formally irregular request or incomplete U be modifiedTdtjjJ-> "*

completed, without prejudice to the adoption of provisional measures when they cannot wait for regularization ".

Now, it seems to us that from the combination of these two articles, it is enough to have official information, namely from Interpol, about the wanted person, on whom the necessary assumptions for extradition, for the "criminal police" to act, as well as adopting provisional mechanisms when it cannot be expected by regularizing an order

irregular or incomplete.

About the rules of Interpol ji already mentioned, so it is impaired the response to this claim by deft fesa.

There is no violation of constitutional rules by applying the rules of Interpol, as the defense would have you believe, insofar as the detention was carried out on the basis of the LCJI rules in Criminal Matters, so your claim does not proceed.

*

3. Of the guarantees allegedly taken by the requesting State, defense invokes in its final that allegations, stating that it is not taken into account, the question has also been answered : ontram above, when smoothed the principle of specialty and includes it when referring that, in relation to the penalty, (question also invoked), that he may be sentenced, that he runs the risk punished with a sentence of 160 years of prison, which, to be according to the extra redound in fact, in a prison p dictating, erpétua, again does not proceed, until because as already described in these amendments in the context of the analysis, the issue of opposition, citing that before the this moment, there is still another guarantee offered by the USA, that of the extradited being tried for a single crime of money laundering, the penalty of which will be up to 20 years in prison, if this question is asked of by Requested state. Once again your claim is unfounded.

4. Applicant's rights - right to ample defense, right to appear in court and to the principle of adversarial proceedings.

As it had done when opposing the extradition request, as well as in the appeal filed with the STJ against the first judgment of this Court of Appeal and which was invalidated, again, now in view of its final allegations, the Extradite pleads violation of the principle of contradictory and their right to

broad defense, in his saying, following in interpretation made to paragraph 2 of art. 0 55 th Judicial Cooperation Law. In suite s words, the interpretation made to no. 1 of art. 0 55 ° of the LCJI "(...) *not to admit the evidence due diligence is constitutional inconsistency, violates the right of defense and the principle of adversarial 22. no. ' 1 and 35 ° 6 and 7) and clearly demonstrates the position of one of the interveners at the expense of another ".*

"Ab initio" to say that there is no reason for the Extradite, since, in the presence and case, at no time did the Rapporteur or the collective of this Court make any application or disapplication of this rule and, therefore, it is natural that they had not interpreted it.

It is true that, when opposing the request for extradition (not without first mentioning the alleged unconstitutionality 'of paragraph 2 of art. 0 55 ° of the LCJI, specifically, in the part in which it determines that the opposition to the process can only be based on the fact that the person claimed is not the detainee or the extradition assumptions are not verified), the Extraditite rallied and requested the hearing of ten witnesses (six of them residing abroad and four in the country), however, regarding this requirement in which he requested the hearing of these witnesses, there was no pronouncement, either from the Rapporteur or from the collective of ^ Tribune I.

Subsequently, a judgment was issued by this Court, the Extraditalndo filed an appeal with the STJ and, through it, alleged violation by the Tribunàfda Relation to its right to ample defense and hence unconstitutionality,

alleged interpretation made to paragraph 2 of art. 0 55 of the LCJI.

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Once the case was sent to the STJ, the highest Court of Appeal, it would issue a judgment (no. 57/2020, of 16/10) through which it revoked the judgment of this Court of Appeal, due to the omission of notification to the Extre dictating to present its final allegations, ordering the process to be discontinued to fulfill this formality.

Notwithstanding this, the STJ pronounced and explained about a good part of the questions raised by suggestions the Extradite in the appeal filed, as already mentioned above, among which the failure to pronounce by the Court of Appeal on the request for the hearing of witnesses. over the

In this regard, after assuring that on the Extractant's request, when opposing the extradition request, "(...) *there was no express pronouncement nor from the Honorable High Court Judge, conference ",* the STJ stated that " *with this omission of pronunciation in relation to a diligence of neither of p oduction of the evidence expressly required Court of Appeal incurred, if not the slightest doubt, in violation of the law, leaving only to identify in what addiction this illegality will be translated ".*

This assertion made, after demonstrate exhaustively that this omission of A decision on the request for a hearing of witnesses did not result in insanable or remedial nullity [5], the STJ dealt with question whether the requirement d o Extraditing, pure and simple, to the hearing of these witnesses made the original the conduct of the due diligence evidences requested by him, and then the STJ himself took care to demonstrate c u no, saying, the final, that " *from what is exposed it is easy to infer that a mere request for proof does not make mandatory the performance of the due diligence with the requested evidence ".* Bypassing, therefore, a supposed understanding of the commission to configure a situation of instability of investigation, under the terms and effects established in the letter. c) of paragraph 2 of art. 0 152 of the CPP. To the

Then, after due clarification, the STJ stated that <1 ..) *not there being any other legal provision to combine the omission in rage*

[5] See pp 22 to 25 of the STJ Judgment, No. 57/2020, of 16/10.

as an argument-dependent nullity, only *it remains to be concluded, by exclusion of parts, and by express imposition of article T15l> 0 °, paragraph 2, of the CPP, that this is a mere procedural irregularity ', which, in the case under analysis, would only determine the invalidity of the act to which it refers, if it had been argued in the following three days, counting from the day*

Extraditing was notified to any ulid

any term of the process, pursuant to Article 155 of the CPP '. That said, the STJ continued with its elucidation, saying that "the *Applicant has been notified*

of the decision ordering his extradition on the 4th of August, according to the certificate on pages 299 of Vol I, and only in his appeals, which were filed in court on the 10th of the same month, he argued the omission of pronunciation in relation to the evidence required by him ". After this he stated: " *in conclusion, due to the lack of a timely argument, the irregularity ended up being remedied "*[6].

Therefore, given that the said STJ ruling (delivered on October 16, 2020 of the same logo notified to the Extradite and the defense) has already become final, it must be agreed that the question of the omission of pronunciation of this T on the said request to request evidence in the opposition phase to extradition was outdated.

Furthermore, in support of the truth, through the STJ's of this exhibition and the excerpts at assertions, it is not only clear that e da Relação made use of any time this LCJI Court, as shown, paragraph 2 of art. 0 55 of

obviously, that he also did not make any interpretation to this norm and that he could and give rise, in this way, to the alleged violation of the principle of contradictory and of the principle of wide defense.

Therefore, it is demonstrated that in nr Relação oment, the Tribunal-da ade, whether by way practiced any unconstitutional application of of unconstitutional norm whether > and by way of interpretation to normative voiced that would lead to a constitutional nonconformity situation.

6 See pp 25 and 26 of the STJ Judgment, No. 57/2020, of 10/16.

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As is well known, by the imposition of our Fundamental Law, the Cape Verdean courts verdeans can't apply? norms contrary to the Constitution or to those contained Principles therein, which also includes the prohibition of normative interpretations eventual contrary to its norms or to the principles inserted in it (art. 0 211. ° 3 of the CRCV).

Therefore, as a consequence of this constitutional imposition, reiterated in LOCFTJ what is and in the Judges' Statutes, to a normative unconstitutionality ^ by any of the parties, in the context of any proceedings to be carried out in our courts, the competent judge for the case not just is obliged to rule on the alleged constitutional non-conformity how should you unapply the standard if the consider unconstitutional, and / oj remove the interpretation that implies violation of the constitutional principles oi any rules of our Fundamental Law,

However, in the present case, although the Extradite alleges that paragraph 2 of the art. 0 55 of the LCJI is unconstitutional, this in determining that the tion in extradition process can only be based on the fact that the detainee is not the person claimed or there will be no assumptions about extradition, is that, as shown above, at no time did this Court of Appeal apply the egal precept in allusion and neither make nor interpret it. And so it is because, as amply demonstrated any above, even this Court has not ruled on the Extrapitant's request, through which he asked the audi witnesses listed,

As it seems obvious, having the T ribunal da Relação omitted pronunciation over the said application, which led to a situation of procedural irregularity (remedied due to lack arity of argument, as stated by the STJ referred to), this is not to say that that Court made use ã above of paragraph 2 of art. 0 55 of the LCJI or any interpretation thereof.

Therefore, in the absence of a situation of application by the Court of the List of norms whose unconstitutionality has been invoked in the

process, being in front of a pure situation of omission of pronouncement on request for the production of evidence and that in the case, as procedural irregularity as stated and demonstrated by the STJ, it was healed due to the lack of timely complaint, there is no way to speak of violation by the Rapporteur of the process and / or by that Court of the principle of the adversary and the right to ample defense and still less it is possible to demand of them a pronouncement on the alleged question of unconstitutionality. And there is no way to demand and make this pronouncement because in no time has the said Rapporteur or the Court in question made use of this provision | i

cool to decide whatever

it was.

There is no way to claim that this Court made use of an allegedly unconstitutional rule and, based on this, the Extr adding try to get decision favorable, his argument falls apart j for breach of the principle of contradictory and the right to ample defense.

It should be noted that, in the light of the CRCV, only in the context of the application of rules to specific cases are ordinary courts obliged to check their conformity

constitutional (art. 0 211. °), not in thirst abstract, whose competence belongs exclusively to the Constitutional Court and at the request of only the entities referred to in art. 0 280. ° gives this Fundamental Law. In other words, the ordinary courts are obliged to assess the constitutional conformity of rules only when they are to be applied to the specific cases subject to their assessment, not when they are even used (as in the case under analysis), even though due the omission of pronouncement on a request that would give rise to the application or not of the norm allegedly unconstitutional.

For all of the above, the alleged unconstitutionality due to su poste application to the letter, paragraph 2 of art. 0 55? ·· - d - a -LCJ in the present case, · \ 'There was part of the Rapporteur was Collective of this Tri ^ ünalK and, consequently, as well as, due to the remedy of the irregularity that occurred when the omission of pronunciation on the request of peäktö ^

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production of evidence, the propagated violation of the contradictory principle and of the right to the 'broad defense of the Extradite, equally reflected in art. o 35, n? 6, CRCV, and arts. o 3 o n ° 1 and 5 of the Proc. Criminal Law, and in arts. o 22, paragraphs 1 and 3, and 35, paragraph 7, of the CRCV.

*

5. Finally, in your allegations; further claims that, in the specific case, the request for extradition requested by the United States on the basis of the request for cooperation under the United Nations Convention against Organized Crime under Article 16 (4) cannot be decreed; which again fails because the extradition request is made on the basis of the Convention

of Nations United Against The Crime Organized Transnational, UNTOC, approved for ratification by Cape Verde, through Resolution n ° 92 / VI / 2004, of 31 May, which refers in article 16 n ° *1* that *extradition shall be subject to the conditions provided for in the domestic law of the requested State Party or in applicable extradition treaties ".* Such an allegation, again, is an attempt ie to bring up the principle of reciprocity and build on the fact that there is no extradition agreement between Cape Verde and the USA. As shown above, this is a problem to be solved among the States Parties that regulate their form of cooperation based on the law and trust.

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Having analyzed the requirements presented by the extradite, we assert that the Court is competent to hear in the first instance the extradition judicial process, the process being the same

There are no other questions or other nullities that prevent knowing the merits of the case.

B] LIST COURT ARLAVENTO

III. Os factos.

The following facts are established, resulting from the documents attached to the case file and which are attributed to the extradited person:

1. In the context of criminal case n ° 19-20450-CR-SCOLA, pending before the United States District Court for the Southern District of Florida, the accusation against Alex Saab Nain Moran and a other individual

o, Alvaro Pulido Vargas, for conspiracy to commit money laundering money, in violation of Title 18 of the United States Code, Section 1956 (h) (Crime One) and seven crimes of laundering of monetary instruments, in violation of Title 18 of the United States Code, Sections 1956 (a) (2) (A) and 2 (Charges Two to Eight);

2. The indictment resulted from a joint investigation by the DEA / American Anti-Drug Agency and FBI / Federal Investigation Agency, which lasted for 4 years and revealed that from November 2011 to approximately September
2015, in the Southern District of Florida and elsewhere, Alex Nain Saab Moran and others conspired to launder approximately $ 350 million USD, from proceeds from an illegal bribery scheme, in which they made pay «n

to the Venezuelan authorities in order to obtain commercial advantages and gain access to the foreign exchange rate system controlled by the Venezuelan government

3. Alex Saab Nain Moran and his co-conspirators wiped the proceeds from that left through wire transfers from bank accounts located in Venezuela, to accounts in the United States, including the Southern District of Florida, and from these, moving on to bank accounts in abroad by elew controlled companies.

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4. Due to the charges, an arrest warrant was issued against Alex Saab Moran on July 25, 2019 by the United States District Court for the Southern District of Florida.

5. The 8 charges against the extraditing are:

The) First indictment: Conspiracy to commit money laundering, in violation of Title 18 of the United States Code, Section 1956 (h);

b) Second indictment: laundering of monetary instruments, in violation of Title 18 of the United States Code, Section 1956 (a) (2) (A) and 2;

c) Third indictment: Laundering of Monetary Instruments, in violation of Title 18 of the United States Code, Section 1956 (a) (2) (A) and 2;

d) Fourth indictment: Laundering Title 18 of Monetary Instruments, in violation of United, to of the Code of States Section 1956 (a) (2) (A) and 2;

e) Fifth Charge: Laundering] of Monetary Instruments, in violation to Title 18 of the United States Code, Section 1956 (a) (2) (A) and 2;

f) Sixth Accusation: Laundering of. Monetary Instruments, in violation of Title 18 of the United States Code, Section 1956 (a) (2) (A) and 2;

g) Seventh Accusation: Washing Monetary Instruments, in violation of Title 18 of the United States Code, Section 1956 (a) (2) (A) and 2;

h) Eighth Accusation: Laundering of Monetary Instruments, in violation of Title 18 of the United States Code, Section 1956 (a) (2) (A) and 2.

6. All the facts attributed to the extradite occurred in the United States of America, in the Southern District of Florida.

7. The prosecution took place in the absence of the extradited.

8. The constitutive facts of the crimes of Money Laundering and criminal organization are also foreseen in Cape Verdean law as crimes and punishable by p

Prison sentences for 4 to 12 years under Article 39 of Law No. 38 / VII.I / 2.0

C09, of April 27, the first crime, s, from 2 to 6 years in prison, under the terms of art. 0 291 of the Penal Code, the remaining 7 crimes.

9. There is no knowledge that any criminal proceedings against the extradited person will run before the Cape Verdean courts for the same facts that support the extradition request.

10. The indictment was made by the United States District Court for the Southern District of Florida,

11.0 United States Code, Title 18, Section 3282, requires that the process
The criminal act started at the most five years after the crime was committed, and the actions were handed down on July 25, 2019, the first being the result of the extradition of a crime that lasted until September 2015, and the second the accusation, imputing to the extraditing a crime that occurred on October 29, 2014, with the accusations side

delivered within the period prescriptive (pages 81 of the case file).

12. The authorities of the United States of America intend that the Extradiland be extradited to be tried for the crimes of which he is accused.

13. Her Excellency, the Minister of Justice] by order dated 02/2 July 2020, considered admissible and granted the extradition request (pages 146 verse and 147 of the case file).

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14. Upon request for extradition, the competent authorities of the United States of America offered formal guarantees regarding

specialty, that they will not detain, prosecute, or punish the extradited for any other offenses other than those contained in the extradition request, and even if the extradited person will not be re-extradited to a third State (pages 38 back of the file).

15. The government of the United States offers other appropriate guarantees that it deems court of Cape Verde cons necessary with respect to any aspects of this extradition request (pages 37 verse and 33 of the file, principle of specialty, limitation of sentences and re-extradition), as well as the guarantee that, if extradited, the extradited person will not be sentenced to life imprisonment or capital punishment. That, under the terms of the Cape Verde legislation, which provides for a maximum prison sentence of 35 years, offer guarantees that the accusation of the extradited person will be reduced from 8 crimes to 1 crime, and will be charged with one crime, the first , the C onspiration to commit Money Laundering1 in violation of Title 18 of the United States Code, Section 1956 (h), subject to a maximum prison sentence of 20 years, pages 540 to 555.

16. The extradited person is a citizen of the Bolivarian Republic of Venezuela and Colombia, where Natural he was born in December 21, 1971, is the son of Luís Amir Saab Rada and Rosa Moran Àbuancha, holder of ordinary passports numbers PE142610 and 1466019 56 (issued respectively in Colombia and Venezuela. Statements by the extradited and photocopies of the passports or journals presented in the attached detention records).

17. On June 12, 2020, the Extradite was detained on Ilha do Sal, when he made a technical stop on a private plane from Venezuela, where he lived, before being detained.

18. Detained and presented to the judicial authorities, having been heard at the Tribunal do Sal and later at the TRB, during the second hearing, the Extradite did not

he just said that he had two ordinary passports (from Venezuela and Colombia) in his possession, as he displayed them and are in the process.

19. At the time of his hearing and validation of his extradition, he did not present any by the TRB, the diplomatic passport. or any proof of statute in Sent Special from the government venezL elano, as required;

20.All documentation attached to the file was submitted later;

21. The crimes attributed to him and for which he was accused occurred in the United States of America.

22. The United States government has provided the formal guarantee provided for in arts. 0 7 o and 44, paragraph 1, subparagraph c), that the extradited person will not be extradited to a third state, nor will he be detained for serving a sentence or for any other purpose, for reasons other than those that justified the request.

IV-0 Right

According to the provisions of art. 0 4 o, the forms of international cooperation provided for in art. 0 l o, they are governed by the rules of treaties, conventions and international agreements that bind the Cape Verdean State. In the absence or insufficiency, they are governed by the provisions of the said diploma.

This extradition request is made on the basis of the United Nations Convention against Transnational Organized Crime, UNTOC, approved for ratification by Cape Verde through Resolution 92 ^ 1/2004, of 31 May, which it refers in its article 16 ° n ° 7 “to *extradition shall be subject to the conditions provided for in the domestic law of the requested State Party or* l *in applicable extradition treaties "*

BARLAVENTO RELATIONS COURT

Pursuant to the provisions of ¡art. 0 3 o n ° 1, "The *international cooperation in criminal matters regulated in (* gift *diploma is based on the principle of reciprocity ".*

In this regard, the Government of the United States of America ensure that will provide the same type of assistance in the event of an identical yir request to be made by the Government of Cat o Verde, although the limitations imposed by the extradition and immigration laws of the United States, there is no obligation to guarantee reciprocity (pages 39 the case file). bring in

However, this is not an impediment to cooperation, as, according to the provisions of n ° 22ddooddisisppoossitiitvivooddáálei in reference, it is the Ministry of Jus hoist that *"Asks for a guarantee of reciprocity if circumstances arise",* being able to dispense with it in the cases referred to in the different paragraphs of No. 3, namely when it is advisable due to nature (Jo facto or the need to fight against certain serious forms of criminality) ls, al. The) of the precept in reference.

In this case, Exma. Mrs. Minister of Justice accepted the request the hair United States of America, although the absence of reciprocity does not cooperate. prevent

According to the law of the United States of America, Southern District of Florida, the penalty applied is not extinguished by prescription.

There is not, in the records, evidence of none of the situations provided for in arts. 0 6 o, 7 o and 8 o, which obligatorily impose the refusal of international cooperation, nor of extradition refusal, provided for in art. 0 32 °, since the crimes were committed in the territory of the Requesting State, whose legislation provides for the possibility of trial, and the extradited person does not have Cape Verdean nationality.

The general condition provided for in art. 0 31 numbers 2, 3 and 4, as the request is made with a view to trial for crimes whose penalty is greater than one year in prison.

BARLAVENTO RELATIONS COURT

IV - Decision.

For this reason, and because the legal requirements have been verified, the judges of this Court agree to order the extradition of ALEX SAAB NAIN MORAN, better identified in the case file, to the United States of America, to be put on trial for eight crimes, being one for Conspiracy to commit money laundering and seven for Money Laundering, referenced in the order of prosecution of pages. 87 of the file and in the request made by the Public Ministry.

After res judicata, proceed with the delivery of the extradited person, pursuant to the provisions of article 60.

Without costs under article 73, without prejudice to the requesting State's responsibility for the expenses inherent to this extradition request, under the terms of article 26, paragraph 2.

Registe e notifique-se.

Mindelo, 04 de janeiro de 2021

- Está conforme -

Mindelo, 04.01.2021

(Text processed and revised by the rapporteur and first subscriber)