

RENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

THE COURT OF CASSATION, CRIMINAL CHAMBER,  
delivered the following judgment:  
Ruling on the appeal brought by:

- Mr Carl X ..., (Carl Freer)

Against the judgment of the Court of Appeal of AIX-EN-PROVENCE, 5th Chamber, dated 12 January 2011, which, on charges of concealment and breach of trust, sentenced him to two years' imprisonment, 50,000 Euro fine, and ordered the continuation of the effects of the arrest warrant;

The COURT, after deliberations in the public hearing held on 11 January 2012 during the debate and deliberation, in the training provided for in Article 567-1-1 of the Code of Criminal Procedure: Mr Louvel Mr Bloch, Rapporteur, Mr Dulin, Mrs Desgrange, Mr Rognon, Mrs Nocquet, Mr Ract-Madoux, Mr Bayet, Mrs Canivet-Beuzit, Members of the Chamber, Mrs Labrousse, Moreau;  
Advocate General: Mr Lacan;  
Clerk of the Chamber: Ms Leprey;

On the report by Councilor BLOCH, the observations of the professional civil society WAQUET, FARGE and HAZAN, lawyer in the Court, and the Opinion of Advocate General LACAN;

Having regard to the Memorial and the additional comments submitted;

On the first ground of appeal, alleging infringement of Articles 122, 131, 134, 591 and 593 of the Code of Criminal Procedure, lack of grounds, lack of legal basis, together breach of the rights of the defense;

"Inasmuch as the judgment under appeal rejected the exceptions of nullity raised by Mr X.;

"On the grounds that Article 131 of the Code of Criminal Procedure provides that if the person is absconding or residing abroad, the examining magistrate may, on the advice of the public prosecutor, award a warrant against him That it follows from the proceedings that Mr X. was domiciled in France and that he had fled when he was wanted and that he was at the same time sought by the German authorities Who issued a warrant for his arrest on 20 April 2001 and that he was subsequently arrested in Great Britain on 7 June 2001 and placed under judicial supervision, and that it has been established

that Mr X. And that he was then domiciled abroad, and that the opinion of the Public Prosecutor provided for in Article 131 of the same Code is expressed in the form of requisitions when the latter is of the opinion that he should issue a warrant Without the need to add other requisitions to it; In the present case, that the warrant of arrest is a search order which may allow the person to be transferred to the trial court without having been heard beforehand; That he is not subject to the search and seizure procedure of Article 134 of the Code of Criminal Procedure where the person concerned resides outside France; That this was the case in the present case; Whereas, accordingly, the warrant of arrest for Mr X. of 20 March 2002, issued in accordance with Article 123 of the Code of Criminal Procedure as regards the identity of the person, Article 131 of the Code of Criminal Procedure, validly allowed the latter to be referred to the court, the title remaining otherwise enforceable after the order for reference; That the investigating judge can not be criticized for having sought to defeat the rights of the defense by issuing an arrest warrant for serious acts of organized crime, since Mr X, a national of Swedish, resided abroad, under the judicial control, only provisional, of a foreign authority, in this case Great Britain, on behalf of a second, Germany, and that it was specified In the mandate which the person had last resided in England, which was true;

"(1) whereas the warrant of arrest, which can be issued by the investigating judge only after the opinion of the public prosecutor, must prove for himself that he is lawful, The warrant of arrest issued against Mr. X. concerned only the indictment of the public prosecutor of 26 July 2000, which had not been made by name against the accused and did not seek the issuance of a warrant, The Court of Appeal disregarded the meaning and scope of Article 131 of the Code of Criminal Procedure;

"(2) Where no one can be returned to the trial court if he has not been charged or duly summoned, and in the case of the person who is absent or who is resident abroad, Means that dismissal may not be ordered without the arrest warrant being served on the person who has been tried in a fair and lawful manner and that this is not the case, Without giving an indication of the place of residence of the person concerned, who is known to the investigating judge, since it permits the defense of the rights of the defense to be avoided by a reference without a hearing, in which Mr X. contended that the magistrate Who had not indicated his address in the arrest warrant issued against him, was aware of the latter on the basis of information obtained in the context of mutual legal assistance set up with the German judicial authorities, Merely asserting that the warrant of arrest issued In accordance with Article 123 of the Code of Criminal Procedure as regards the identity of the person and Article 131 of the Code of Criminal Procedure had validly permitted Mr X. to be referred to the trial court without seeking , If the address of the latter was indeed known to the investigating magistrate and, therefore, if the notification of the warrant given without any indication

of domicile had been tried in a fair and lawful manner, the Court of Appeal Insufficient grounds for its decision ";

Whereas it appears from the judgment under appeal and from the pleadings that the investigating judge, having before him facts relating to international traffic in stolen vehicles, issued an arrest warrant against Mr X;

Whereas, in order to reject the objection of nullity of this warrant of arrest and of the subsequent pleadings, the judgment is delivered by the reasons given in the plea;

Whereas in this state the applicant can not complain that it has been so decided, since it follows from Article 134 of the Code of Criminal Procedure that a person who is absconding, As in this case outside France, does not have the status of a party within the meaning of Article 175 of the Code and can not rely on the provisions of the third paragraph of Article 385, since the order for reference Purged, if it existed, the procedural flaws;

Hence it follows that the plea can not be upheld;

On the second ground of appeal, infringement of Articles 591 and 593 of the Code of Criminal Procedure, 113-9 of the Criminal Code, 4 of Additional Protocol No 7 to the European Convention on Human Rights, lack of grounds , Lack of legal basis, together breach of the non bis in idem principle;

In so far as the judgment under appeal rejected the objection raised by Mr X. alleging infringement of the principle ne bis in idem;

"On the grounds that the court finds that the accused has been convicted of fraud, either for separate acts, as the possession of the substance of the crime in France as a preventive measure has not been prosecuted; That the principle of non bis in idem was invoked, since the accused had not been convicted of the same offense;

"Whereas under the principle of non bis in idem it is prohibited to prosecute a person on account of acts for which he has already been prosecuted and punished definitively abroad, albeit under a different qualification, In the present case, in order to reject the objection based on a breach of that principle, the judgment under appeal holds that the accused was convicted in Germany for fraud and not for concealment, either for separate acts; In this way, without ascertaining whether the facts for which Mr. X. was convicted in Germany were not the same as those for which he is currently being prosecuted under the classification of possession, the Court of Appeal deprived his basic decision Law under Articles 113-9 of the Criminal Code and 4 of Additional Protocol No. 7 to the European Convention on Human Rights ";

Whereas, in order to reject the objection of res judicata, the judgment is delivered by the reasons set out in the plea;

Whereas, in the light of these statements, which show that the acts of fraud, which are the subject of the conviction pronounced by the German courts, are distinct from those of the stolen goods covered by these proceedings, the Court of Appeal Justified its decision;

Hence it follows that the ground can not be accepted;

The third ground of appeal, alleging infringement of Articles 591 and 593 of the Code of Criminal Procedure, 314-1 of the Criminal Code, lack of grounds, lack of legal basis;

"In that the confirmatory judgment under appeal declared Mr X. guilty of breach of trust and sentenced him to two years' imprisonment and a fine of EUR 50 000;

"On the grounds that it appears from the proceedings that Mr. Y. has entrusted his vehicle Ferrari with a view to sale, that the owner has kept the documents of the said vehicle and that these elements are not contested; That this car was transported to Spain under the personal control of the defendant in his discretion, the carrier having indicated that he had been surprised to find that it was a Ferrari when he had been called For a Porsche, that, having no news of his property, MY had to carry out his own investigation in order finally, not without difficulty, to retake possession of it in Spain, that nothing could justify that a vehicle of such Value could be found abroad, especially since it could not be the subject of a lawful transaction in the absence of a document, and by thus transporting the vehicle in Spain without the owner's knowledge, MX .. has done good which had been entrusted to him a contra use That the offense of breach of trust is therefore constituted in all its elements, material and intentional;

"Whereas the breach of confidence results from the diversion of the goods which have been placed under the burden of making them a specific use, whereas in the present case the findings of the contested judgment and the documents That Mr. Y. had entrusted his vehicle to Mr. X. for the purpose of selling it, that Mr. X. argued in his pleadings that it was for this purpose that the vehicle had been conveyed to Spain, and that MY .. Had met with a prospective purchaser there, and that by failing to respond to this defense, the Court of Appeal set aside its decision on grounds which violated Article 593 of the Code of Criminal Procedure " ;

The fourth ground of appeal, alleging breach of Articles 591 and 593 of the Code of Criminal Procedure, 121-3 and 321-1 of the Criminal Code, lack of grounds, lack of legal basis;

"In that the confirmatory judgment under appeal declared Mr X. guilty of concealment and sentenced him to two years' imprisonment and a fine of EUR 50 000;

"On the grounds that it appears from the German proceedings that Mr. X. stated, at the time of the execution of the request for extradition from the German authorities, that he had sold nine vehicles under the coercion of the Mafia, That he was afraid of reprisals and that he had come to Great Britain in order to protect himself and his family; whereas it is not disputed that the four Porsche vehicles referred to Been sold in France by Mr. X., manager of Well Com Motors, and that these vehicles were stolen, that Mr. X .. can not validly, in order to prove his good faith, rank with the other professionals, Even when upstream of the traffic and in contact with the source of this

traffic, the fact that for a luxury car sales professional who operated Well Com Motors under the false name Z For which it is not justified in any way, to sell repeatedly, In the same stroke of time, the vehicles stolen and then fleeing, abandoning his company and his domicile, testify to his complete bad faith; That the two testimonies from which it relies, drawn from the German proceedings, of which an incomplete copy is produced, no examination of the accused which is in the file contrary to what was announced in the letter of 4 November 2010 of the Council, are not of a nature To contradict this observation in a mafia context that he himself described; That the offense of concealment is constituted in all its elements, material and intentional;

"While the offense of concealment presupposes, in addition to the possession of a thing of fraudulent origin, a certain and personal knowledge of the fraudulent origin of that thing, that in this case Mr. X. That he had not been able to ascertain the fraudulent origin of the vehicles he had resold, having regard in particular to the conditions for their acquisition, and that, moreover, other professionals had not detected the The fraudulent origin of the said vehicles, by deducting the defendant's bad faith from the only mafia context in which the facts had taken place, without characterizing the personal and certain knowledge of Mr. X of the origin Fraudulent use of vehicles, the Court of Appeal gave insufficient reasons for its decision "; The means being combined;

Whereas the enunciations in the judgment under appeal make it possible for the Court of Cassation to satisfy itself that the Court of Appeal has, without insufficiency or contradiction, replied to the peremptory rulings of the submissions before it, Both material and intentional, the offenses with which the accused was convicted;

Hence it follows that the pleas in law, which merely call into question the sovereign assessment by the trial judges of the facts and circumstances of the case and of the evidence contradictorily debated, can not be admitted; And whereas the judgment is regular in form;

DISMISSES the appeal;

Thus made and judged by the Court of Cassation, Criminal Chamber, and pronounced by the President on the twenty-fifth of January two thousand and twelve;

In witness whereof the present judgment has been signed by the President, the Rapporteur and the Chamber Registrar;