France ? Court of Cassation, N° 2923, 12 December 2018

Country of Decision:
France

Country of Applicant:
France

Date of Decision:
12-12-2018

Citation:
Court of Cassation (2018) N° 2923 (17-85.736)

Court Name:
Court of Cassation, Criminal Chamber

Keywords:
Humanitarian considerations

Relevant Legislative Provisions:
Council of Europe Instruments > EN - Convention for the Protection of Human Rights and Fundamental Freedoms [1] > Article 6 [2]
Council of Europe Instruments > EN - Convention for the Protection of Human Rights and Fundamental Freedoms [1] > Article 7 [3]

Headnote:
According to the new 10 September 2018 French Law on Controlled Migration, there will be no criminal proceedings against individuals who have helped in the movement and illegal residence of undocumented migrants, when the aid consisted in providing legal, linguistic or social advice or assistance, or any other aid provided for an exclusively humanitarian purpose.

Criminal immunity is thus defined in a much less restrictive manner, and shall apply to acts committed before the entry into force of the new law.

Facts:

The applicant is a French national who has received a four-month suspended prison sentence by the Aix-En-Privence Court of Appeal for having facilitated the movement and stay of some two hundred Sudanese and Eirtrean migrants, and for helping them cross the Italian-French border. He was prosecuted on the basis of Articles L 622-1 to L 622-3 of the Code for the entry and stay of Foreigners and the Right to Asylum (CESEDA) which punish assistance regarding irregular entry, movement and residence of foreigners in France.

The applicant invoked the benefit granted by article L.622-4 which provided for criminal immunity on the basis of humanitarian aid and the absence of any direct or indirect financial gains. The Court of Appeal found that the defendant could not benefit from this immunity, because his action was part of a militant action consisting in withdrawing foreigners from the controls implemented by authorities to apply legal provisions relating to migration.

The applicant appealed this decision before the Court of Cassation.

Decision & Reasoning:
The Court of Cassation drew the consequences of the new 10 September 2018 law, which widened the scope of criminal immunity to purely humanitarian actions. Although the facts at stake dated back to October 2016, the famous principle of « more favourable law » (*loi pénale plus douce*) found application in this case ? thus, the new provisions applied to offences committed before the entry into force of the new law (providing that they had not given rise to a previous condemnation).

The Court of Appeal?s decision was thus annulled, and the applicant was declared free of criminal charges by reason of the purely humanitarian nature of the aid he had provided to the foreigners.

Outcome:
Appeal granted.

Subsequent Proceedings :
In a decision date 26 February 2020, the Court of Cassation [overturned](#) [4]a decision by the Aix-en-Provence Court of Appeal sentencing the same applicant to three months imprisonment.

The Court of Appeal had estimated that the applicant?s aid was not carried out for a solely humanitarian purpose. They retained that his actions - devoid of spontaneity and constituting an intervention on command without knoweldge of the distressing situation of the migrants- were part of a militant action aimed at knowingly removing foreigners from the authorities? controls.

The Court of Cassation annulled this decision and ruled that it did not follow from the legal provisions in question that the immunity applying to authors of exclusively humanitarian acts was limited to purely individual and personal actions. The court estimated that such protection did not exclude non-spontaneous and militant action exercised within an association.

Observations/Comments:
Through these decisions, the Court of Cassation seemed to confirm the existence of what has been referred to as a « **solidarity principle** » (*principe de solidarité*), or « **fraternity principle** » (*principe de fraternité*).

The principle had been raised by the applicant before the Constitutional Council in July 2018, and the constitutional judge had recognised it as holding constitutional value.

For more detailed comments on the topic, see :

http://blog.leclubdesjuristes.com/laide-aux-migrants-illegaux-la-cour-de-cassation-applique-le-principe-de-fraternite-sans-le-dire/ [5]

https://www.dalloz-actualite.fr/flash/delit-de-solidarite-application-immediate-des-dispositions-penales-plus-douces#.XnCb_i3Mx8c [6]

https://www.cabinetaci.com/le-delit-de-solidarite-et-le-principe-de-fraternite/ [7]

This summary was written by Sinéad Gough, LLM Student at Queen Mary University of London.

Attachment(s):

Arrêt Cour Cassation 2018 - solidarite (1).pdf[8]

National / Other Legislative Provisions:
1789 Declaration on the Rights of Man and of the Citizen (Déclaration des Droits de l?Homme et du citoyen du 26 août 1789) [9]
Article 8 [10]
Penal Code (Code Pénal) [11]
Articles 111-3 [12]
111-4 [13]
112-1 and 121-3 [14]
Code for the entry and stay of Foreigners and the Right to Asylum (Code de l?entrée et du séjour des étrangers et du droit d?asile) [15]
Articles L 622-1 [16]
L 622-3 and L 622-4 [17]
10 September 2018 Law N° 2018-778 (Loi du 10 Septembre 2018) [18]
Articles 38 [19]
71 [20]

Links:
[1] http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr
[2] https://www.asylumlawdatabase.eu/node/195#toc_34
[3] https://www.asylumlawdatabase.eu/node/195#toc_43
[4] https://www.courdecassation.fr/jurisprudence_2/chambre_criminelle_578/33_26_44476.html
[5] http://blog.leclubdesjuristes.com/laide-aux-migrants-illegaux-la-cour-de-cassation-applique-le-principe-de-fraternite-sans-le-dire/
[6] https://www.dalloz-actualite.fr/flash/delit-de-solidarite-application-immediate-des-dispositions-penales-plus-douces#.XnCb_i3Mx8c
[7] https://www.cabinetaci.com/le-delit-de-solidarite-et-le-principe-de-fraternite/
[8] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Arr%C3%AAt%20Cour%20Cassation%202020%20solidarite%20%281%29.pdf
[9] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/1789-declaration-rights-man-and-citizen-d%C3%A9claration-des-droits-de-l
[10] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/article-8
[11] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/penal-code-code-p%C3%A9nal

[12] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/articles-111-3

[13] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/111-4

[14] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/112-1-and-121-3

[15] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/code-entry-and-stay-foreigners-and-right-asylum-code-de-l%E2%80%99entr%C3%A9e-et

[16] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/articles-l-622-1

[17] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/l-622-3-and-l-622-4

[18] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/10-september-2018-law-n%C2%B0-2018-778-loi-du-10-septembre-2018

[19] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/articles-38

[20] https://www.asylumlawdatabase.eu/en/national-and-other-legislation/71