

**APPLICATION N° 25862/94**

Leong Cheong MENG v/PORTUGAL

**DECISION** of 27 November 1995 (Striking out of the list of cases) (1)

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**Article 30, paragraph 1 (b) of the Convention** *Alleged violation of Articles 2 and 3 of the Convention and of Article 1 of Protocol No 6 in a case of extradition from Macao to China Matter resolved the Macao judicial authorities having decided not to extradite the applicant No general interest Application struck out of the list of cases*

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**THE FACTS**

The applicant is a Chinese citizen. He was born in 1967. He was being held in Coloane prison in Macao.

The applicant was represented before the Commission by Mr Pedro Redinha, a lawyer practising in Macao.

The facts of the case, as submitted by the parties, may be summarised as follows:

On 15 April 1994 the applicant was arrested in Macao with a view to his extradition to China, where he faced charges of persistent theft of vehicles and where he risked being sentenced to death under Article 152 of the Chinese Criminal Code.

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(1) On the same day the Commission took two similar decisions in relation to Applications Nos 24464/94 and 25410/94 also concerning Portugal.

On 14 June 1994 after the administrative procedure had been exhausted, the applicant filed an application challenging the Chinese Government's extradition request with the High Court of Macao (Tribunal Superior de Justiça de Macau), which dismissed it in a judgment of 8 July 1994

The full High Court upheld this decision in a judgment of 28 September 1994

The grounds for dismissal were that the Chinese Foreign Ministry had given assurances to the effect that if the applicant was extradited he would not be sentenced to death. Extradition was allowed in these circumstances under the Portuguese extradition law of 1975 in force in Macao. A minority of the court expressed the view, without casting doubt on the assurances given by the Chinese Government, that this law had become unconstitutional with the introduction of the Portuguese Constitution of 1976, Article 33, No. 3 of which provides, "There shall be no extradition for crimes which carry the death penalty under the law of the State requesting the extradition". Accordingly, the minority held there could be no extradition despite the assurances provided by the Chinese authorities. The applicant agreed with this position, adding that those assurances could not be seen as credible.

The applicant brought a constitutional law appeal which was declared admissible in a decision of the High Court reporting judge of 3 October 1994.

In a judgment of 6 July 1995, the Constitutional Court (Tribunal Constitucional) held that the relevant provision of the 1975 extradition law was unconstitutional and quashed that part of the High Court of Macao judgment supporting the extradition.

On 18 October 1995 the High Court of Macao amended its judgment of 28 September 1994, holding that the applicant's extradition should not go ahead.

## **COMPLAINTS**

The applicant complains that extraditing him to China would constitute a violation of Articles 2 and 3 of the Convention and of Article 1 of Protocol No. 6.

## **PROCEEDINGS BEFORE THE COMMISSION**

The application was introduced on 29 November 1994 and registered on 6 December 1994.

On 9 December 1994, the Commission decided to apply Rule 36 of its Rules of Procedure and to indicate to the Portuguese Government that, if the Constitutional Court decision resulted in the applicant's extradition to China being approved, it would be desirable in the interests of the parties and of the proper conduct of the proceedings to refrain from extraditing the applicant until the Commission had been able to examine the application more fully. The Commission also decided to give notice of the application to the respondent Government and to invite them to submit written

observations on its admissibility and merits. Further, the Commission decided to adjourn the case until the Constitutional Court had given judgment on the merits, and to resume its examination of the application in the light of this.

On 2 August 1995, the Government submitted certain documents and requested that the application be struck out of the list. The applicant submitted his comments on this point on 15 September 1995.

Also on 15 September 1995, the Commission decided to renew the Rule 36 indication.

On 3 October 1995, the Government requested that the indication be revoked and reiterated its request for the application to be struck out of the list. The applicant submitted his comments on this point on 16 and 25 October 1995.

On 26 October 1995, the Commission decided to revoke the Rule 36 indication.

## **REASONS FOR THE DECISION**

The Commission notes that as a result of the Constitutional Court judgment of 18 October 1995 *and that of the High Court of Macao of 6 July 1995, the applicant will not be extradited to China.*

The Commission considers that this is a circumstance leading to the conclusion that the matter is being resolved within the meaning of Article 30 para. 1 (b) of the Convention and that, therefore, it is no longer justified to continue the examination of the application. Further, it considers that no particular circumstance affecting respect for human rights as defined in the Convention requires the further examination of the application pursuant to the last sentence of Article 30 para. 1 of the Convention.

For these reasons, the Commission unanimously,

**DECIDES TO STRIKE THE APPLICATION OUT OF ITS LIST OF CASES**