

7 September 2021

Court of Cassation

Appeal No 19-87.367

Criminal Chamber - Section Bench

PUBLISHED IN BULLETIN

ECLI:FR:CCASS:2021:CR00868

Text of the **decision**

Header

No H 19-87.367
FS-B No S 19-
87.376
No C 19-87.662
No 00868

RB5
7 SEPTEMBER 2021

PARTIAL
CASSATION
REJECTION
NON-
ADMISSION
INADMISSIBILI
TY

Presiding Judge

IN THE NAME OF THE FRENCH PEOPLE

**JUDGMENT OF THE COURT OF CASSATION, CRIMINAL
CHAMBER, 7 SEPTEMBER 2021**

The European Center for Constitutional and Human Rights and Sherpa, Mr [YJ] [G], Mr [RM] [XC] [E], Mr [O] [U], Mr [BQ] [W], Mr [T] [NK] [Z], Mr [JT] [CW] [K], Mr [Y] [GC], Mr [QQ] [M] [RB], Mr [MZ] [UH], Mr [Q] [DH], Mr [BG] [N], Mr [P] [KE], Mr [YJ] [I], Ms [C] [J] and Ms [X] [AG], civil parties, and **Lafarge** SA have filed appeals on points of law against judgment No 8 of the examining chamber of Paris Court of Appeal, 2nd section, dated 7 November 2019; in the particular case against **Lafarge** SA, on the charges of complicity in crimes against humanity, financing of terrorist activities and endangering the lives of others in particular, this judgment declared the briefs filed by the European Center for Constitutional and Human Rights and Sherpa to be inadmissible, and ruled on **Lafarge** SA's motion to quash its indictment.

The European Center for Constitutional and Human Rights and Sherpa, civil parties, filed an appeal on points of law against judgment No 5 of the examining chamber of Paris Court of Appeal, 2nd section, dated 7 November 2019; in the particular case against Mr [F] [KP] on the charges of financing of terrorist activities and endangering the lives of others, this judgment declared the briefs filed by said organisations to be inadmissible and ruled on Mr [KP]'s motion to quash his indictment and to have passages deleted from documents of the proceedings.

Mr [B] [R] filed an appeal on points of law against judgment No 7 of the examining chamber of Paris Court of Appeal, 2nd section, dated 7 November 2019; in the particular case against him on the charges of financing of terrorist activities, endangering the lives of others and customs offences, this judgment declared the briefs filed by the European Center for Constitutional and Human Rights and Sherpa to be inadmissible and ruled on Mr [B] [R]'s motion to quash his indictment and to have passages deleted from documents of the proceedings.

By order of 9 December 2019, the presiding judge of the criminal chamber ordered that the appeals filed against judgment No 8 be joined under No 19-87.367 and that they be examined by the criminal chamber.

By an order of the same date, the presiding judge of the criminal chamber ordered that the appeal filed against judgment No 5, under No 19-87.376, be referred to the criminal chamber and joined to the appeals filed under No 19-87.367.

By order of 11 December 2019, the presiding judge of the criminal chamber ordered that the appeal filed against judgment No 7, under No 19-87.662, be joined to the appeals filed under No 19-87.367 and referred to the criminal chamber.

Statements of grounds and of reply, and additional observations were produced.

On the report by Mr Barbier, judge-referee, the observations of SCP Bauer-Violas, Feschotte-Desbois et Sebah, counsel for the European Center for Constitutional and Human

This document has been anonymised. The translation has been provided by GNS and Eurojust and is not an official translation.

Rights and Sherpa, Ms [C] [J] and Ms [X] [AG], civil parties, the observations of SCP Zribi et Texier, counsel for Mr [YJ] [G], Mr [RM] [XC] [E], Mr [O] [U], Mr [BQ] [W], Mr [T] [NK] [Z], Mr [JT] [CW] [K], Mr [Y] [GC], Mr [QQ] [M] [RB], Mr [MZ] [UH], Mr [Q] [DH], Mr [BG] [N], Mr [P] [KE] and Mr [YJ] [I], civil parties, the observations of SCP Spinosi, counsel for **Lafarge** SA, the observations of SCP Lyon-Caen et Thiriez, counsel for Mr [V] [GN], the observations of Cabinet Munier-Apaire, counsel for Mr [B] [R], the observations of SCP Célice, Texidor, Périer, counsel for Mr [D] [A], and the conclusions of Mr Desportes, first advocate-general, the lawyers having been given the opportunity to speak last, after proceedings at the public hearing of 8 June 2021, attended by Mr Soulard, presiding judge, Mr Barbier, judge-rapporteur, Mr Bonnal, Ms Ménotti, Mr Maziau, Ms Labrousse, Mr Seys, Mr Dary and Ms Thomas, judges of the chamber, Ms de Lamarzelle, Mr Violeau, judge-referees, Mr Desportes, first advocate-general, and Ms Boudalia, clerk of the chamber,

the criminal chamber of the Court of Cassation, made up of the abovementioned presiding judge and judges, after having deliberated on the above in accordance with the law, handed down this judgment.

Summary

Facts and procedure

1. The following ensues from the contested judgment and the documents of the proceedings.
2. **Lafarge SA (Lafarge)**, a company incorporated under French law, with registered office in [Locality 2], had a cement plant built near Jalabiya (Syria) at a cost of several hundred million euro. The plant was commissioned in 2010. This cement plant is owned and was operated by one of Lafarge's sub-subsidiaries, **Lafarge Cement Syria (LCS)**, a company incorporated under Syrian law, in which the parent company had a holding of over 98%.
3. Between 2012 and 2015, the region in which the cement plant is located saw fighting and was occupied by various armed groups, including the so-called Islamic State organisation (IS).
4. During this period, the Syrian employees of LCS continued to work, enabling operation of the plant to continue, whereas the management, made up of foreign nationals, was evacuated to Egypt in 2012, from where it continued to run the cement plant. Living in [Locality 1] in accommodation provided by their employer, the Syrian employees were exposed to a number of risks, including extortion and kidnapping by various armed groups, including IS.
5. Concomitantly, LCS paid sums of money, through various intermediaries, to a number of armed factions who successively took control of the region and who were in a position to compromise the activity of the cement plant.
6. The plant was urgently evacuated in September 2014, shortly before it was seized by IS.
7. On 15 November 2016, Sherpa and the European Center for Constitutional and Human Rights (ECCHR), along with 11 Syrian employees of LCS, filed a complaint, as civil parties,

before the examining magistrate, specifically on the charges of financing of terrorist activities, complicity in war crimes and crimes against humanity, exploitative labour practices and endangering the lives of others.

8. On 9 June 2017, the public prosecution service requested that the examining magistrate commence a judicial investigation, in particular regarding the financing of terrorist activities, submission of multiple persons to working conditions incompatible with human dignity and endangering the lives of others.

9. On 1 December 2017, Mr [KP], head of security for the **Lafarge** group between 2008 and 2015, was indicted on the abovementioned charges.

10. On the same date, Mr [R], managing director of LCS between July 2014 and August 2016, was indicted on the same charges.

11. At the recommendation of the public prosecution service dated 27 June 2018, on 28 June 2018 **Lafarge** was indicted on the charges of complicity in crimes against humanity, financing of terrorist activities and endangering the lives of others, in particular.

12. On 31 May 2018, Mr [KP] requested that the examining chamber rule on the motion to quash his indictment, in particular.

13. On 1 June 2018, Mr [R] also requested that the examining chamber rule on the cancellation of documents of the proceedings, and the motion to quash his indictment.

14. Ms [J] and Ms [AG], Yazidi victims of IS, filed a motion to become civil parties to the proceedings on 30 November 2018.

15. On 27 December 2018, **Lafarge** requested that the examining chamber rule on the motion to quash its indictment, in particular.

16. The examining chamber of Paris Court of Appeal handed down three judgments dated 24 October 2019 in which, in particular, it denied civil party status to Sherpa and ECCHR. Appeals on points of law have been filed against these decisions.

Pleas

Examination of the admissibility of the appeals against the examining chamber's judgments No 5 and No 8 of 7 November 2019, insofar as they are filed by Sherpa

Reasoning

17. In a judgment handed down today (Crim., 7 September 2021, appeal No 19-87.031), the Court of Cassation declared the appeal to be inadmissible insofar as it was filed by Sherpa, as that organisation's status as a civil party to the proceedings had been rightly ruled inadmissible.

18. Therefore, the appeals, insofar as they are brought by that association, are inadmissible. Examination of pleas

Regarding the two pleas entered for Mr [R] against the examining chamber's judgment No 7 of 7 November 2019

Regarding the first plea, the third plea (fourth and seventh aspects), the fourth plea (first, third, fourth, fifth and sixth aspects), the fifth plea, the sixth plea and the seventh plea entered for **Lafarge** against the examining chamber's judgment No 8 of 7 November 2019

19. These pleas are not such as to allow admission of the appeal within the meaning of Section 567-1-1 of the French Code of Criminal Procedure.

Pleas

Regarding the two pleas entered for ECCHR against the examining chamber's judgment No 5 of 7 November 2019

Statement of pleas

20. The first plea criticises the contested judgment for having declared the brief filed by Sherpa and ECCHR to be inadmissible, quashed the indictment of Mr [KP] for endangering the lives of others and ordered the deletion of passages referring to this indictment from the documents of the proceedings, arguing that 'the overturning of judgments No 2018/05060 and No 2019/02572 of 24 October 2019, appealed under No 19-87.031 and No 19-87.040, which declared the status of Sherpa and ECCHR as civil parties to the proceedings to be inadmissible, will consequently result in the overturning both of the operative part of the contested judgment which declared the briefs entered by the civil parties to be inadmissible, and of the judgment in its entirety for failure to address the essential points made in the briefs of the civil party appellants.'

21. The second plea criticises the contested judgment for having quashed the indictment of Mr [KP] for endangering the lives of others and ordered the deletion of passages referring to this indictment from the documents of the proceedings, arguing that:

'1°/ the examining magistrate can indict persons against whom there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or as accomplice, in the commission of the offences of which they are accused; Section 80-1 of the French Code of Criminal Procedure does not require that the participation by the interested party in the offence be certain but only that the possibility of this participation be likely; compliance with the specific obligations of prudence or safety provided for in Sections L. 4121-3, R. 4121-1 et seq. and Section R.

4141-13 of the French Labour Code is the responsibility of the manager of the employing legal entity or his delegate in matters of safety; delegation of powers may be concluded from the factual circumstances establishing that the delegatee has the necessary skills, authority and means; the examining chamber quashed the indictment of Mr [KP] on the grounds of his capacity as head of security, and not safety, of the **Lafarge** group, the absence of proof that this role included the functions of protecting the health and safety of employees and improving working conditions within the meaning of the labour code and the lack of proof of a written or oral delegation of powers held by him, whereas it was clear from, on the

This document has been anonymised. The translation has been provided by GNS and Eurojust and is not an official translation.

one hand, the findings of the examining chamber that there was evidence that it was likely that **Lafarge** had effective authority over the employees of the Jalabiya plant and that Lafarge participated in the crime of endangering the lives of others owing to its failure to train its employees, to put in place an evacuation plan guaranteeing the safety of its employees during an attack and to update the single security document in line with developments in military operations in the area and, on the other hand, the findings of the contested judgment that, in light of his functions as head of security for the **Lafarge** group, following a military career in the marines, special forces and commandos, Mr [KP] held a strategic position in the assessment of the abovementioned risks, played a key role in the group's decision to pay levies to IS in order to ensure employee safety since he recruited Mr [H] [NV], risk manager in Syria, acted as his supervisor, ran weekly meetings on the situation in Syria, met with Mr [S] [EX], an IS intermediary, and was in contact with him about the setting of an IS levy, acceptance of which by the group's management depended on a prior discussion with Mr [KP] and, finally, ordered Mr [NV] to draw up an evacuation plan for the plant and participated in the development of this plan, and therefore the examining chamber, which held that there was reliable or consistent evidence making it likely that Mr [KP], who had the power to make decisions concerning the safety of employees at the Jalabiya plant, had participated in the crime of endangering the lives of others, breached Section 80-1 of the French Code of Criminal Procedure and Section 223-1 of the French Criminal Code, together with Sections 591 and 593 of the French Code of Criminal Procedure;

2°/ the examining magistrate can indict persons against whom there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or

as accomplice, in the commission of the offences of which they are accused; Section 80-1 of the French Code of Criminal Procedure does not require that the participation by the interested party in the offence be certain but only that the possibility of this participation be likely; compliance with the specific obligations of prudence or safety provided for in Sections L. 4121-3, R. 4121-1 et seq. and Section R.

4141-13 of the French Labour Code is the responsibility of the manager of the employing legal entity or his delegate in matters of safety; delegation of powers may be concluded from the factual circumstances establishing that the delegatee has the necessary skills, authority and means; the examining chamber held that it was not established by any exhibit of the proceedings, document or hearing that Mr [KP] held an oral delegation of powers whereas it was clear, on the one hand, from judgment No 2018/07495 upholding the indictment of **Lafarge**, that there was inadequate training for plant personnel and that there was no plant evacuation plan guaranteeing the safety of employees in the event of an attack and, on the other hand, from the findings of the contested judgment and from Mr [KP]'s brief that not only, in view of the situation on the ground, was it Mr [KP]'s responsibility, in his capacity as head of security with a solid military background, to draw up or supervise the development of the plant employee evacuation plan, as the prospect of the plant being captured by members of IS was an identified risk, but that he had ordered Mr [NV] to draw up this evacuation plan and had personally participated in the development of the plan without however guaranteeing the safety of plant employees, and therefore the examining chamber, which held that there was reliable evidence suggesting that Mr [KP] had the skills, the authority and the means to have a plant evacuation plan drawn up and had participated in the crime of endangering the lives of others, did not legally justify its decision with regard to Section 80-1 of the French Code of Criminal Procedure and Section 223-1 of the French Criminal Code, together with Sections 591 and 593 of the French Code of Criminal Procedure;

3°/ anyone who knowingly, by aiding or abetting, facilitates the preparation or

This document has been anonymised. The translation has been provided by GNS and Eurojust and is not an official translation.

execution of an offence is an accomplice to that offence; the examining chamber quashed the indictment of Mr [KP] on the charge of endangering the lives of others without verifying, despite having upheld the indictment of **Lafarge** and its CEO for lack of employee training and lack of an evacuation plan guaranteeing the safety of employees in the event of an attack on the plant and for failure to update the single security document in line with developments in military operations in the vicinity of the plant and despite having found that Mr [KP] was responsible for assessing the safety risks in the area surrounding the plant controlled by IS and ordered Mr [NV] to draw up a plant evacuation plan, whether there was reliable or consistent evidence that Mr [KP] had participated, as an accomplice, in the offence of endangering the lives of others, and therefore the examining chamber did not legally justify its decision with regard to Section 80-1 of the French Code of Criminal Procedure and Sections 121-6, 121-7 and 223-1 of the French Criminal Code, together with Sections 591 and 593 of the French Code of Criminal Procedure. '

Reasoning

The Court's response

22. The pleas are joined.

23. With the abovementioned judgment (Crim., 7 September 2021, appeal No 19-87.031), the Court of Cassation declared the status of ECCHR as a civil party to the proceedings to be admissible on the basis of Sections 2-4 of the French Code of Criminal Procedure and, as far as said organisation is concerned, overturned without appeal judgment No 5 of the examining chamber of Paris Court of Appeal of 24 October 2019.

24. The examining chamber therefore incorrectly declared the brief filed on behalf of this organisation to be inadmissible.

25. Nevertheless, the judgment stands.

26. To be specific, first of all, when quashing the indictment of Mr [KP] on the charge of endangering the lives of others, the judgment stated that the person concerned did not hold the post of head of safety but rather head of security of the **Lafarge** group, and as such his duties consisted in evaluating potential threats to the various areas of activity of the companies of the group based on the information gathered and making recommendations to ensure the protection of property and people.

27. The court added that at no point in the proceedings was it established that this post included protecting the health and safety of employees within the meaning of the French Labour Code or improving working conditions, while the obligations provided for by Sections L. 4121-3, R. 4121-1 et seq. of the French Labour Code are incumbent on the employer.

28. Lastly, the examining chamber specified that at no point in the proceedings was it established that Mr [KP] held a written or oral delegation of powers for the purpose of ensuring compliance with these obligations provided for by the labour code.

29. Therefore, the examining chamber did justify its decision to quash said

indictment.

30. Secondly, the Court of Cassation is in a position to verify that the civil parties' brief did not contain any essential point that was not addressed by the contested judgment.

31. Lastly, the appellants could not request that Mr [KP] be indicted on the charge of complicity in endangering the lives of others, such an act not being in itself conducive to the manifestation of the truth (Crim., 15 February 2011, appeal No 10-87.468, Bull. crim. 2011, No 22).

32. Therefore, the pleas must be dismissed insofar as they are entered for ECCHR.

Pleas

Regarding the first plea entered for ECCHR against the examining chamber's judgment No 8 of 7 November 2019

Statement of plea

33. The plea criticises the contested judgment for having declared the briefs filed by Sherpa and ECCHR to be inadmissible and quashed the indictment of **Lafarge** for acts of complicity in crimes against humanity, arguing that 'the overturning of judgments No 2018/05060 and No 2019/02572 of 24 October 2019, appealed under No 19-87.031 and No 19-87.040, which declared the status of Sherpa and ECCHR as civil parties to the proceedings to be inadmissible, will consequently result in the overturning both of the operative part of the contested judgment which declared the briefs entered by the civil parties to be inadmissible, and of the judgment in its entirety for failure to address the essential points made in the briefs of the civil party appellants.'

Reasoning

The Court's response

34. On the basis of the above, the examining chamber incorrectly declared the brief to be inadmissible insofar as it was filed on behalf of ECCHR.

35. Consequently, the pleas put forward by ECCHR must be examined.

Pleas

Regarding the second plea entered for **Lafarge** against the examining chamber's judgment No 8 of 7 November 2019

Statement of plea

36. The plea criticises the judgment for having refused the motion to quash the indictment of **Lafarge** on the charge of financing of terrorist activities, arguing that:

1°/ it is clear from Section 421-2-2 of the French Criminal Code that the material element of the offence of financing of terrorist activities is "the act of financing a terrorist activity by providing, gathering or managing funds, securities or any property or by giving advice for this purpose"; the examining chamber merely stated, when refusing to quash the indictment of the appellant on this charge, that the payments made from the accounts of LCS appear to have

been made "with the agreement, or even on the instructions, of Mr [A]", whereas mere agreement cannot be qualified as giving advice within the meaning of this text, and therefore the examining chamber, which failed to present the reliable or consistent evidence making it likely that Mr [A] issued instructions, but simply offered a hypothesis, did not justify its decision with regard to Section 80-1 of the French Code of Criminal Procedure and Section 421-2-2 of the French Criminal Code;

2°/ the examining chamber based its finding that the indictment of **Lafarge** on the charge of terrorist financing should not be quashed on the fact that Mr [L] would have been aware that LCS had made the disputed payments, whereas Section 421-2-2 of the French Criminal Code does not condemn knowledge of acts of terrorist financing but rather the acts themselves, and therefore the examining chamber did not justify its decision with regard to Section 80-1 of the French Code of Criminal Procedure and Section 421-2-2 of the French Criminal Code;

3°/ lastly, **Lafarge** was indicted on the charge of terrorist financing for, firstly, having paid intermediaries in order to procure supplies of raw materials from the organisation "Islamic State", secondly, having paid commission and levies to the organisation "Islamic State" in order to safeguard the passage of employees and goods from the Jalabiya plant (Syria) and, thirdly, having sold the cement produced by the Jalabiya plant for the benefit of the terrorist organisation "Islamic State"; in its refusal to quash even partially the indictment of **Lafarge** on this charge, the examining chamber simply held that Lafarge was involved in the payment of transit fees to the terrorist organisation in order to safeguard the passage of employees and goods from the Jalabiya plant, failing to address the essential points made in the brief duly filed by **Lafarge**, who maintained that it was physically impossible for its indirect subsidiary **Lafarge** Cement Syria to have obtained raw materials from a terrorist group and to have sold cement to that group, and therefore the examining chamber did not justify its decision with regard to Section 80-1 of the French Code of Criminal Procedure and Section 421-2-2 of the French Criminal Code. '

Reasoning

The Court's response

37. In its refusal to quash the indictment of **Lafarge** on the charge of financing of terrorist activities, the judgment held, first, that an internal investigation and report, carried out at the request of the **Lafarge**-Holcim group, revealed that payments to the tune of USD 15 562 261 were made from the accounts of LCS, through intermediaries, including in particular Mr [S] [EX], a Syrian businessman, to the armed groups which successively

took control of the region where LCS was operating (Free Syrian Army, Kurds then Islamic State) and, second, that LCS received some USD 86 000 000 in funds from **Lafarge** Cement Holding, a company incorporated under Cypriot law, itself controlled by **Lafarge**.

38. The court specified that these transactions were recorded manually, rather than electronically as would be usual, and that a dedicated account was created for the payments to Mr [EX], under the heading 'representation fees'.

39. The court added that the successive operational managers of LCS, Mr [GN] followed by Mr [R], allowed, with the agreement, or even on the instructions, of their supervisor and line manager from **Lafarge**, Mr [A], who reported directly to CEO Mr [L], the payment of sums to Mr [EX] in order to secure the safe passage of plant employees on the various roads from their homes to their workplace, roads on which members of IS had set up a number of checkpoints.

40. The examining chamber also held that **Lafarge** could not have been unaware that IS was a terrorist organisation, as the company was kept informed of the situation in Syria through the minutes of the weekly meetings of the Security Committee for Syria, specifying that during the meeting of 12 September 2013 it was stated that 'since July, logistical flows and movements of personnel have been disrupted, even sometimes blocked by the Islamists, AN and IS (...), that the presence of these Islamist groups constitutes for us a threat (...), that it is becoming increasingly difficult to operate without having to negotiate directly or indirectly with these networks classified as terrorist networks by international organisations and the United States'.

41. Lastly, the examining chamber pointed out that IS, as well as Al-Nusra Front, were among the terrorist organisations blacklisted by United Nations Security Council resolution 2170/2014, which banned any financial support or trade with such organisations.

42. These findings resulted from the examining chamber's sovereign assessment of the facts and showed that **Lafarge** and its local subsidiary could have been led to negotiate, albeit indirectly, with IS or other terrorist groups in order to maintain logistical flows, such that the appellant cannot reproach the court for not having positively established that it was materially impossible for LCS to have procured raw materials from or sold cement to IS, and therefore the examining chamber based its decision on reasons that were neither insufficient nor contradictory.

43. To be specific, according to Section 421-2-2 of the French Criminal Code, it is sufficient for it to be possible to establish that the author of the financing knows that the funds supplied are destined to be used by the terrorist organisation to commit a terrorist act, whether or not that act materialises, it moreover being irrelevant that it does not intend for the funds to be used for this purpose.

44. The plea must therefore be rejected.

Pleas

However, regarding the third plea (first, second, third, fifth and sixth aspects) and the fourth

plea (second aspect) entered for **Lafarge** against the examining chamber's judgment No 8 of 7 November 2019

Statement of pleas

45. The third plea criticises the contested judgment for having refused the motion to quash the indictment of **Lafarge** on the charge of endangering the lives of others, arguing that:

1°/ the relationship of subordination, without which there can be no employment contract, is characterised by the performance of work under the authority of an employer who has the power to issue orders and instructions, to check that they have been carried out and to sanction any failures on the part of its subordinate; in the present case, because the examining chamber simply accepted the existence of **Lafarge's** "effective authority" over the Syrian plant, without determining what this entailed and, above all, without clarifying whether or not there was, between **Lafarge** and said employees, a relationship of subordination characterised by the performance of work under the authority of an employer with the power to issue orders and instructions, to check that they have been carried out and to sanction any failures on the part of its subordinates, the decision of the examining chamber had no legal basis with regard to Sections L. 1221-1, R. 4121-1, R. 4121-2 and R. 4141-13 of the French Labour Code and Section 223-1 of the French Criminal Code;

2°/ an employee working on behalf of a subsidiary, for which he does his work and from which he receives orders and seeks instructions, is subordinate to that subsidiary, regardless of the capital links and group ties existing between the subsidiary and its parent company; in the present case, because the examining chamber attributed to the parent company obligations incumbent on the employer, purely on the basis of capital links, namely a holding – an indirect holding – of 98.7% (sic), and an integrated group structure between **Lafarge** and its subsidiary LCS, without explaining how this system differs from the relationships that may exist within a group of companies, and without specifying in what capacity the parent company should be considered to be the employer of the workers at its Syrian subsidiary, the decision of the examining chamber had no legal basis with regard to Sections L. 1221-1, R. 4121-1, R. 4121-2 and R. 4141-13 of the French Labour Code, Section L. 225-1 of the French Commercial Code and Section 223-1 of the French Criminal Code;

3°/ in the case of an apparent employment contract, its existence is presumed, unless it is proved to be fictitious; in the present case, because the examining chamber concluded that, with regard to the employees of the Syrian plant, the obligations incumbent on the employer fell to **Lafarge**, founding its conclusion purely on the fact that said employees were "employed under the cover of contracts under Syrian law" entered into with LCS, without clarifying either the allegedly fictitious nature of these contracts under Syrian law or the existence of a body of evidence establishing a relationship of subordination, which is the very essence of an employment contract, between **Lafarge** and said employees of the Syrian plant, the decision of the examining chamber had no legal basis with regard to Sections L. 1221-1, R. 4121-1, R. 4121-2 and R. 4141-13 of the French Labour Code and Section 223-1 of the French Criminal Code;

5°/ a person is only criminally liable for their own actions; in the present case, by refusing to quash the indictment of **Lafarge** on the charge of endangering the lives of others owing to that company's failure to meet the safety obligations provided for by Sections R. 4121-1, R. 4121-2 and R. 4141-13 of the French Labour Code, which are incumbent only on the employer, whereas the employees allegedly endangered were not employed by **Lafarge**, but by its Syrian sub-sub-subsidiary, LCS, the examining chamber disregarded the

This document has been anonymised. The translation has been provided by GNS and Eurojust and is not an official translation.

principle of criminal liability for personal actions, thus breaching Sections 121-1 and 223-1 of the French Criminal Code;

6°/ the existence of capital links and group ties between two companies cannot, as such, engage the criminal liability of the parent company for the actions of its subsidiary, in particular when it has only an indirect holding in the latter; in the present case, as the examining chamber, in holding that **Lafarge** could have incurred criminal liability for acts committed by its subsidiary, relied solely on the existence of such links, namely an indirect holding by **Lafarge** in the capital of LCS and the fact that the parent company holds considerable decision-making authority in respect of the policy of its subsidiaries, in particular with regard to employee safety, the examining chamber disregarded the principle of criminal liability for personal actions, thus breaching Sections 121-1 and 223-1 of the French Criminal Code. '

46. The fourth plea criticises the contested judgment on the same point, arguing that:

'2°/ the examining chamber refused the motion to quash the indictment of **Lafarge** on the charge of endangering the lives of others with respect to a number of employees of its indirect subsidiary, LCS, holding that the personnel of the plant operated by LCS had not received adequate training in the event of an attack and that the single security document did not appear to have been updated in line with developments in military operations in the area where the plant was located, even though LCS, a Syrian company operating in Syria and linked to its employees by Syrian law contracts, was not subject to the specific safety obligations provided for by French law, in particular those set forth in Sections R. 4121-1, R. 4121-2 and R.

4141-13 of the French Labour Code, and therefore the examining chamber did not justify its decision with regard to Section 223-1 of the French Criminal Code and Section 80-1 of the French Code of Criminal Procedure. '

Reasoning

The Court's response

47. The pleas are joined.

Having regard to Section 223-1 of the French Criminal Code and Section 593 of the French Code of Criminal Procedure:

48. The first of these texts punishes the act of directly exposing others to immediate risk of death or injury that could cause mutilation or permanent disability through the manifestly deliberate breach of a specific obligation of safety or prudence provided for by law or regulation.

49. Pursuant to the second of these texts, any judgment or decision must include sound reasons justifying the decision. Insufficient or contradictory reasons are equivalent to a lack of reasoning.

50. In upholding the order of the examining magistrate along with the indictment of **Lafarge** on the charge of endangering the lives of others through the manifestly deliberate breach of the employer's specific obligations set out in Sections R. 4121-1, R. 4121-2 and R. 4141-13 of the French Labour Code, arising from the general safety obligation incumbent on all

employers with regard to their employees provided for in Sections L. 4121-1 to L. 4121-3 of the French Labour Code, the judgment stated that although the personnel concerned at the plant operated by LCS were employed under the cover of contracts under Syrian law, they did not however receive adequate training in the event of an attack, and the evacuation of that personnel, when the site was seized by IS fighters on 19 September 2014, was made possible only by the use of supplier vehicles, the vehicles made available by the company having proved insufficient in number.

51. The court added that LCS is a subsidiary in which **Lafarge** has an indirect holding of 98.7%, while the statements of Mr [R], operational manager of LCS, suggest that decisions in matters of employee safety were taken at the level of the management of the parent company.

52. The examining chamber concluded that there thus appeared to be reliable or consistent evidence suggesting that the employees of the Syrian plant were under the effective authority of **Lafarge**.

53. The court was correct in identifying reliable or consistent evidence of both the existence of a relationship of subordination between the Syrian employees and **Lafarge**, and, beyond the necessary coordination of business activities between **Lafarge**, the parent company, and LCS, its sub-subsidiary, and the state of economic domination that such a relationship can engender, ongoing interference by the parent company in the economic and social management of the employer entity, leading to a total loss of autonomy of action of the latter (Soc., 6 July 2016, appeal No 15-15.493, in particular, Bull. 2016, V, No 147; Soc., 25 November 2020, appeal No 18-13.769, in the process of being published).

54. However, the examining chamber should not have deduced that the French Labour Code was applicable on the basis of these findings alone.

55. The examining chamber should first have established, in particular with regard to Articles 8 and 9 of Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) and, where applicable, other international texts, which provisions were applicable to the employment relationship between **Lafarge** and the Syrian employees.

56. It should then have determined which of those provisions containing a specific obligation of safety or prudence, within the meaning of Section 223-1 of the French Criminal Code, might have been disregarded (Crim., 13 November 2019, appeal No 18-82.718, published).

57. The judgment is therefore overturned on this point.

Pleas

Regarding the second plea entered for ECCHR and for Ms [C] [J] and Ms [X] [AG] against the examining chamber's judgment No 8 of 7 November 2019

Regarding the single plea entered for Mr [YJ] [G], Mr [RM] [XC] [E], Mr [O] [U], Mr [BQ] [W], Mr [T] [NK] [Z], Mr [JT] [CW] [K], Mr [Y] [GC], Mr [QQ] [M] [RB], Mr [MZ] [UH], Mr [Q] [DH], Mr [YJ] [I], Mr [P] [KE] and Mr [BG] [N] against the examining chamber's judgment No 8 of 7 November 2019

Statement of pleas

58. The second plea entered for ECCHR, Ms [J] and Ms [AG] criticises the contested judgment for having quashed the indictment of **Lafarge** on the charge of complicity in crimes against humanity, arguing that:

1°/ the examining magistrate can indict persons against whom there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or as accomplice, in the commission of the offences of which they are accused; Section 80-1 of the French Code of Criminal Procedure does not require that the constituent elements of the offence be established but only that the possibility that the person concerned participated in the offence be likely; the examining chamber held that there was no proof of culpable intent on the part of Lafarge and thus quashed the indictment of **Lafarge** on the charge of complicity in crimes against humanity, despite stating that the need for there to be, at the time of indictment, reliable or consistent evidence as required by Section 80-1 could not be confused with the requirement to have gathered evidence of the constituent elements of the alleged offence and, at this stage of the proceedings, merely consisted in the gathering of material evidence on the basis of which it could be presumed that the person could have participated in the acts concerned by the case, and despite finding that there was sufficient material evidence to suggest, on the one hand, that IS committed crimes against humanity in the Iraq/Syria region and in the vicinity of the cement plant in 2013 and 2014 and, on the other hand, that **Lafarge** regularly financed IS during the same period, thus resulting in a body of reliable or consistent evidence making it likely that **Lafarge** participated as an accomplice in the crimes against humanity perpetrated by IS, and therefore the examining chamber failed to draw the legal conclusions warranted by its own findings, thereby breaching Section 80-1 of the French Code of Criminal Procedure and the abovementioned principle, together with Sections 591 and 593 of said code;

2°/ the examining magistrate can indict persons against whom there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or as accomplice, in the commission of the offences of which they are accused; the culpable intent of the accomplice lies in their knowingly aiding or abetting the main perpetrator in the acts that facilitated the preparation or execution of the offence; the examining chamber held that it could not be claimed that **Lafarge's** financing of IS, insofar as it was intended to enable the cement plant to continue operating in an area plagued by civil war then controlled by IS, demonstrated **Lafarge's** intention to be associated with the crimes against humanity perpetrated by IS, whereas the economic aim pursued by **Lafarge** cannot constitute the slightest justification for committing the offence of complicity in crimes against humanity, without seeking to establish that **Lafarge**, which, as found by the examining chamber, had voluntarily and repeatedly financed, over several months in 2013 and 2014, the criminal organisation Islamic State, had not acted in the knowledge of the intention of this organisation to commit crimes against humanity, and therefore the examining chamber did not legally justify its decision with regard to Section 80-1 of the French Code of Criminal Procedure and Sections 121-3, 121-6, 121-7 and 212-1 of the French Criminal Code, together with Sections 591 and 593 of the French Code of Criminal Procedure;

3°/ the examining magistrate can indict persons against whom there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or as accomplice, in the commission of the offences of which they are accused; the culpable intent of the accomplice lies in their knowingly aiding or abetting the main perpetrator in the acts that facilitated the preparation or execution of the offence; the examining

This document has been anonymised. The translation has been provided by GNS and Eurojust and is not an official translation.

chamber held that the financing of IS by **Lafarge** did not demonstrate **Lafarge's** intention to be associated with the crimes against humanity perpetrated by IS despite deducing from its findings that **Lafarge** was kept informed of the situation in Syria through the minutes of the weekly meetings of the Security Committee for Syria, held by telephone, and that at the time in question, several reports of the Independent International Commission of Inquiry on the Syrian Arab Republic set up by the United Nations Human Rights Council were circulated, reports dating from July 2013, August 2013, February 2014 and August 2014 referring to "crimes against humanity" in Raqqah with a resurgence of executions, kidnappings, imprisonment and torture, which the examining chamber recognised as sufficient to deem it likely that IS had committed such crimes, together with IS propaganda videos of mass executions and beheadings of civilians because they belonged to a particular group, meaning that there was reliable or consistent evidence suggesting that **Lafarge** repeatedly financed, over several months in 2013 and 2014, the criminal organisation Islamic State knowing that this organisation had already committed crimes against humanity and had the intention to commit such crimes, and therefore the examining chamber failed to draw the legal conclusions warranted by its own findings, thereby breaching Section 80-1 of the French Code of Criminal Procedure and Sections 121-3, 121-6, 121-7 and 212-1 of the French Criminal Code, together with Sections 591 and 593 of the French Code of Criminal Procedure;

4°/ the examining magistrate can indict persons against whom there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or as accomplice, in the commission of the offences of which they are accused; the culpable intent of the accomplice lies in their knowingly aiding or abetting the main perpetrator in the acts that facilitated the preparation or execution of the offence; the examining chamber held that the financing of IS by **Lafarge** did not demonstrate **Lafarge's** intention to be associated with the crimes against humanity perpetrated by IS but did not seek to verify, as it was invited to do by the brief filed by Ms [C] [J] and Ms [X] [AG], whether the official statements and publications issued by IS itself during the period in question did not indicate the existence of reliable or consistent evidence suggesting that **Lafarge** repeatedly financed, over several months in 2013 and 2014, the criminal organisation Islamic State knowing that this organisation had already committed crimes against humanity and had the intention to commit such crimes, and therefore the examining chamber did not legally justify its decision with regard to Section 80-1 of the French Code of Criminal Procedure and Sections 121-3, 121-6, 121-7 and 212-1 of the French Criminal Code, together with Sections 591 and 593 of the French Code of Criminal Procedure;

5°/ the examining magistrate can indict persons against whom there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or as accomplice, in the commission of the offences of which they are accused; the culpable intent of the accomplice lies in their knowingly aiding or abetting the main perpetrator in the acts that facilitated the preparation or execution of the offence; the examining chamber held that **Lafarge's** financing of IS, which was intended to enable the cement plant to continue operating in an area plagued by civil war then controlled by IS, did not demonstrate **Lafarge's** intention to be associated with the crimes against humanity perpetrated by IS, without verifying, as it was requested and required to do, whether in light of the size of the sums paid to Mr [S] [EX] and suppliers linked to IS, amounting to USD 15 562 261, and the inevitable use of funds amassed by IS, a criminal organisation, to launch criminal attacks against people, constituting crimes against humanity, of which **Lafarge** was aware, **Lafarge** had not financed IS knowing that the funds it supplied would be used by IS to commit crimes

against humanity, and therefore the examining chamber did not legally justify its decision with regard to Section 80-1 of the French Code of Criminal Procedure and Sections 121-3, 121-6, 121-7 and 212-1 of the French Criminal Code, together with Sections 591 and 593 of the French Code of Criminal Procedure;

6°/ the examining magistrate can indict persons against whom there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or as accomplice, in the commission of the offences of which they are accused; the culpable intent of the accomplice lies in their knowingly aiding or abetting the main perpetrator in the acts that facilitated the preparation or execution of the offence; the moral aspect of complicity does not require that the accomplice shared the intent of the main perpetrator to commit the primary offence; if it is the case that the examining chamber, having noted that the culpable intent of the accomplice lies in the willingness to be associated with the commission of the primary offence, held that the accomplice must share the perpetrator's intent to commit the primary offence, then the examining chamber added a condition to the law, thereby breaching Section 80-1 of the French Code of Criminal Procedure and Sections 121-7 and 121-3 of the French Criminal Code, together with Sections 591 and 593 of the French Code of Criminal Procedure;

7°/ the examining magistrate can indict persons against whom there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or as accomplice, in the commission of the offences of which they are accused; the culpable intent of the accomplice lies in their knowingly aiding or abetting the main perpetrator in the acts that facilitated the preparation or execution of the offence, and the accomplice must anticipate

all possible categories and aggravations of the primary act; while there is a difference between crimes of terrorism and crimes against humanity, crimes against humanity may result from the intensification of terrorist acts consisting of attacks against the lives of specific populations, constituting a generalised or systematic attack; the examining chamber took the view that the financing of IS by **Lafarge** did not demonstrate **Lafarge's** intention to be associated with the crimes against humanity perpetrated by IS, despite holding that **Lafarge** knew that the funds provided were destined to be used to commit acts of terrorism and despite deeming the same acts of assault on life depicted in IS propaganda videos, showing mass executions and beheadings of civilians on discriminatory grounds, to be "acts of terrorism" and "crimes against humanity", such that an accomplice who was aware of the perpetrator's intention to commit such acts had to consider them under all categories including crimes against humanity, and therefore the examining chamber did not legally justify its decision with regard to Section 80-1 of the French Code of Criminal Procedure and Sections 121-3, 121-6, 121-7 and 212-1 of the French Criminal Code, together with Sections 591 and 593 of the French Code of Criminal Procedure;

8°/ the examining magistrate can indict persons against whom there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or as accomplice, in the commission of the offences of which they are accused; the culpable intent of the accomplice lies in their knowingly aiding or abetting the main perpetrator in the acts that facilitated the preparation or execution of the offence; the examining chamber simply held that although keeping the plant running clearly exposed employees to a threat to their physical integrity, and indeed their lives, it cannot be maintained that it was the intention of **Lafarge** to be associated with any crimes against humanity committed against some of those employees, but the examining chamber failed to verify, as it was invited to do in the briefs filed by Sherpa and ECCHR, which relied on acts of complicity other than financing, whether

all the actions of **Lafarge**, under whose authority the Syrian plant employees worked – these actions consisting in **Lafarge's** decision to continue to keep the plant running, despite the evacuation of its expatriates in 2012, its requiring that employees live close to the plant in an area controlled by IS, specifically [Locality 1], its making employees travel to Aleppo to draw their wages, which resulted in an employee being kidnapped, and go through daily checkpoints controlled by IS, its poor handling of employee kidnappings and its instructing employees to remain at the plant despite the absence of an adequate evacuation plan, until the plant was attacked by IS on 19 September 2014, something which the management of **Lafarge** knew was imminent, thus forcing employees to flee spontaneously and in a state of panic, even though **Lafarge** had been kept informed of the situation in Syria and international reports and propaganda videos told the story of crimes against humanity committed by IS in 2013 and 2014, particularly in the vicinity of the plant – did not constitute reliable or consistent evidence suggesting that **Lafarge** knowingly aided or abetted IS in the acts that facilitated the preparation or execution of crimes against humanity against the employees of the plant, and therefore the examining chamber did not legally justify its decision with regard to Section 80-1 of the French Code of Criminal Procedure and Sections 121-3, 121-6, 121-7 and 212-1 of the French Criminal Code, together with Sections 591 and 593 of the French Code of Criminal Procedure. '

59. The other plea criticises the contested judgment for having quashed the indictment of **Lafarge** on the charge of complicity in crimes against humanity and ordered the deletion of some passages on page D1338/2, arguing that:

'1°/ the examining magistrate can indict a person if there is reliable or consistent evidence making it likely that they could have participated, as perpetrator or as accomplice, in the commission of the offences of which they are accused; having noted that there is sufficient evidence to suggest that IS and other affiliated groups committed crimes against humanity in the area including the provinces of Raqqah and Aleppo, in the vicinity of the cement plant operated by **Lafarge** Cement Syria and that there is evidence suggesting that **Lafarge** could have financed this terrorist organisation, with the aim of ensuring its cement plant remained open in this area, from which the examining chamber inferred that collectively there was reliable or consistent evidence making it likely that the indicted persons had participated, as accomplices, in the commission of the offence of crimes against humanity submitted to the examining magistrate, the examining chamber could not, without disregarding Section 80-1 of the French Code of Criminal Procedure, hold, and rule as it did, that it cannot be claimed that said financing demonstrated the intention of **Lafarge** to be associated with the crimes against humanity perpetrated by IS;

2°/ the repression of complicity in crimes against humanity does not require that the accomplice had the intention to be associated with or contribute to such crimes; it is sufficient that the accomplice did, knowingly, support the perpetrator of these crimes; by stating the contrary, the examining chamber disregarded Section 80-1 of the French Code of Criminal Procedure and Sections 121-7 and 212-1 of the French Criminal Code. '

Reasoning

The Court's response

60. The pleas are joined.

This document has been anonymised. The translation has been provided by GNS and Eurojust and is not an official translation.

Having regard to Section 121-7 of the French Criminal Code:

61. According to the first paragraph of this text, anyone who knowingly, by aiding or abetting, facilitates the preparation or execution of a crime or an offence is an accomplice to that crime or offence.

62. The question arises as to whether complicity should be defined differently from ordinary law when it is a case of crimes against humanity.

63. According to Section 212-1 of the French Criminal Code, a crime against humanity consists, in particular, of a deliberate attack on life, enslavement, forced movement of people, torture, rape, forced prostitution, persecution of any identifiable group or community for reasons in particular of a religious nature, where these crimes are committed in execution of a concerted plan against a section of the civilian population in the context of a generalised or systematic attack.

64. Crime against humanity is the most serious of crimes because it is not confined to an attack against the individual, which it transcends, but it is humanity that is targeted and negated.

65. The essence of this crime, necessarily running through each of its constituent elements, is the demonstration that the perpetrator has a concerted plan as defined by the abovementioned text, crime against humanity going beyond the crimes under ordinary law that it encompasses.

66. On the other hand, Section 121-7 of the French Criminal Code requires neither that an accomplice to a crime against humanity belong to the organisation, where applicable, that is guilty of this crime, nor that he support the formulation or execution of a concerted plan against a section of the civilian population in the context of a generalised or systematic attack, nor even that he approve the commission of the crimes under ordinary law constituting the crime against humanity.

67. It is sufficient that the accomplice be aware that the main perpetrators are committing or will commit such a crime against humanity and that, through his aiding or abetting, he is facilitating the preparation or execution of said crime.

68. This analysis is based on the case-law of the Court of Cassation on the application of Article 6 of the Charter of the International Military Tribunal at Nuremberg (Crim., 23 January 1997, appeal No 96-84.822, Bull. Crim., 1997, No 32).

69. As said analysis relates only to the concept of complicity, it does not trivialise crimes against humanity per se, characterised strictly as set out in paragraphs 63 and 65.

70. Any other interpretation of Sections 121-7 and 212-1 of the French Criminal Code, considered together, according to which the accomplice to a crime against humanity must support the formulation or execution of a concerted plan, would allow many acts of complicity to go unpunished, whereas it is the multiplication of such acts that paves the way for crime against humanity.

71. Since Section 121-7 of the French Criminal Code makes no distinction as to either the nature of the primary offence or the status of the accomplice, this analysis is intended to apply to legal entities as well as to natural persons.

72. In quashing the indictment of **Lafarge** on the charge of complicity in crimes against

humanity, the judgment firstly stated that there is sufficient evidence to suggest that IS and other affiliated groups have committed crimes against humanity in the area including the provinces of Raqqah and Aleppo, in the vicinity of the cement plant operated by LCS.

73. The court cited as examples of acts attributable to IS, in particular, the execution of a 15-year-old boy accused of blasphemy, kidnapping and hostage-taking, murder and execution without trial, ill-treatment and torture, the execution of 400 young men in Tabqa, 80 kilometres south of the plant, on 2 September 2014, the beheading of young people from the Shaitat clan on 30 August 2014 for their refusal to swear allegiance, and the arrest of Kurds in [Locality 1].

74. It added that the goal pursued by IS, like other groups associated with it, was to impose 'sharia' on the territory under its control, and that it is likely that these acts were the result of a concerted plan to force the populations concerned to respect the religious principles propagated by this organisation.

75. The court further specified that the resurgence of these acts observed over the period between 15 July 2013 and 20 January 2014 in the Raqqah area means that they can be considered to be a generalised and systematic attack on the civilian population.

76. The examining chamber noted that **Lafarge** was kept informed of the situation in Syria through the minutes of the weekly meetings of the Security Committee for Syria, held by telephone, specifying that during the meeting of 12 September 2013 it was stated that 'since July, logistical flows and movements of personnel have been disrupted, even sometimes blocked, by the Islamists, AN and IS', 'the presence of these Islamist groups constitutes for us the main threat to be dealt with. It is becoming increasingly difficult to operate without having to negotiate directly or indirectly with these networks classified as terrorist networks by international organisations and the United States'.

77. The court added that UN Security Council resolution 2170/2014 lists IS, as well as Al-Nusra Front, among the terrorist organisations for which it prohibits any financial support and any trade.

78. The examining chamber then noted that payments totalling USD 15 562 261 were made to Mr [EX] and suppliers linked to IS, from LCS, which itself received some USD 86 000 000 from **Lafarge** Cement Holding, a subsidiary controlled by the **Lafarge** group.

79. It concluded that the financing of IS by **Lafarge** was intended to enable the cement plant to continue operating in an area plagued by civil war then controlled by IS, and that, even though, in this context, the continued operation of the plant clearly exposed employees to a threat to their physical integrity, and indeed their lives, it could not be maintained that said financing demonstrated the intention of **Lafarge** to be associated with the crimes against humanity perpetrated by this group.

80. By ruling thus, despite having deduced from its findings, firstly, that **Lafarge** financed, via its subsidiaries, IS activities to the tune of several million dollars, and secondly, that it had precise knowledge of the actions of the organisation, which were likely to constitute crimes against humanity, the examining chamber disregarded the abovementioned texts and the principles recalled above.

81. Indeed, first of all, knowingly paying a sum of several million dollars to an organisation

whose purpose is purely criminal is sufficient to be considered complicity by aiding and abetting.

82. Secondly, it is irrelevant whether the accomplice was acting with a view to pursuing a commercial activity, something which relates to motive rather than intent.

83. Therefore, the judgment is once again overturned on this point.

Order

ON THESE GROUNDS, the Court:

On the appeal brought against the examining chamber's judgment No 7 of 7 November 2019: DECLARES the appeal filed by Mr [R] to be NOT ADMITTED;

On the appeal brought against the examining chamber's judgment No 5 of 7 November 2019: DECLARES the appeal INADMISSIBLE insofar as it is brought by Sherpa;

DISMISSES the appeal insofar as it is brought by the European Center for Constitutional and Human Rights;

On the appeals brought against the examining chamber's judgment No 8 of 7 November 2019: DECLARES the appeal INADMISSIBLE in so far as it is brought by Sherpa;

OVERTURNS AND SETS ASIDE the abovementioned judgment, but only as regards the provisions thereof declaring the brief of the European Center for Constitutional and Human Rights to be inadmissible, quashing the indictment of **Lafarge** on the charge of complicity in crimes against humanity and ordering deletion on page D 1338/2, and refusing the motion to quash the indictment of **Lafarge** on the charge of endangering the lives of others;

And so that the case may be tried again, in accordance with the law, within the limits of the cassation thus

pronounced,

REMITS the case and the parties to the examining chamber of Paris Court of Appeal, with a differently constituted bench, to that designated by special deliberation taken in chambers;

HOLDS that Section 618-1 of the French Code of Criminal Procedure is not applicable;

ORDERS that this judgment be printed and transcribed in the registers of the clerk of the examining chamber of Paris Court of Appeal and that it be mentioned in the margin or at the bottom of the partially set aside judgment;

Ruling by the Court of Cassation, criminal chamber, handed down by the presiding judge on the seventh of September two thousand and twenty-one.

Preparatory Work

Judge's report
21 September 2021

[DOWNLOAD \(2021-09-07_CR_RAPPORT_19-87.367.PDF - 589 KB\)](#)

Opinion of the advocate-general
21 September 2021

[DOWNLOAD \(20210907_19-87.031_AVIS_AG.PDF - 155 KB\)](#)

Oral opinion of the advocate-general
21 September 2021

[DOWNLOAD \(1987031_AVIS_ORAL1.PDF - 46.7 KB\)](#)

Oral opinion of the advocate-general
21 September 2021

[DOWNLOAD \(1987031_AVIS_ORAL2.PDF - 39.1 KB\)](#)

Communication documents

Report
21 September 2021

[DOWNLOAD \(20210907_COMMUNIQUE_19-87.031.PDF - 339 KB\)](#)

Texts applied

Section 223-1 of the French Criminal Code and Section 593 of the French Code of Criminal Procedure

Section 121-7 of the French Criminal Code