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New strategy to block extradition of Chang to the US is to seek withdrawal of the indictment

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Introduction

Now that all the avenues for appeal in the South African justice system to block his extradition to the United States are exhausted, the former Mozambican Finance Minister, Manuel Chang, has begun the legal battle in the American system.

A petition from a prominent firm of lawyers in New York on 8 June entered the U.S. District Court for the Eastern District of New York, in Brooklyn, requesting from judge Nicholas G. Garaufis, “permission to move to dismiss the indictment because the Prosecution’s delay of Mr. Chang’s trial has violated his right to a speedy trial”.

This is the start of a new battle in the long legal struggle of Manuel Chang to block his extradition to the USA. There are various arguments that Chang’s defence is presenting to reject the indictment, but essentially they can be summarised as follows. Manuel Chang has already spent a long time in prison (in South Africa), which violated his right to a quick trial. On the other hand, the Justice Department of the US lost interest in trying Manuel Chang when Jean Boustani was acquitted by the jury in the same court where Chang should be tried.

Hence the defence of Chang writes “We respectfully request that the Court schedule a pre-motion conference to provide Mr. Chang with the opportunity to vindicate his right to a speedy trial. In the alternative, we respectfully request that the Court enter a briefing schedule for a motion to dismiss the indictment without scheduling a pre-motion conference”

Chang chooses lawyer specialised in white collar crime

In the US, Manuel Chang has entrusted his defence to a prominent law office headquartered in the heart of New York, on the 24th floor of an imposing tower at Madison Avenue, no. 275. This is in the luxurious neighbourhood of Manhattan, the richest in the world (measured in GDP per capita).

The law firm chosen by Chang is called Ford O’Brien Landy LLP. The lawyer who submitted the petition to the court in Chang’s name is the principal partner, who has given his surname to the firm He is called Adam Ford.

Adam Ford has an extensive curriculum as a lawyer and presents himself as “a thoughtful tactician and an indefatigable fighter who represents individuals and corporations engaged in high-stakes civil and criminal litigation. A “White Collar Criminal Defense” specialist.

According to a Brazilian law firm: “By ‘white collar’ crime is understood those offences related with the use of privileged information, bribes and other activities which can be practiced by people regarded as culturally or financially well educated”. It adds “it is common that this type of crime is related with people who occupy political posts, or who even possess some type of influence in the government”. And the term ‘white collar’ refers to the clothing common among educated and influential people, who often wear a suit and formal shirt, which is culturally not associated with the generally common image of a criminal individual”.

Chang's arguments for rejecting the indictment

The main argument of Manuel Chang's defence, to request that the Court reject the indictment of the US Justice Department is that the delay of more than a year – counted from the date of his arrest – before Chang was brought to trial is damaging to the right of the accused to a speedy trial which “weighs in favour of dismissing the indictment”.

“Chang was arrested in December 2018, yet he has still not been tried. This delay is well over a year and is easily presumed prejudicial. Further, all four Barker factors weigh strongly in favor of dismissal of the indictment”, says the petition submitted to the US court, citing the precedent case known as the Barker factors.

Delay in Chang's trial is the fault of the American government

Chang's defence argues that “The Prosecution cannot contend that the complexity of the case against Mr. Chang warrants this delay, as it was able to complete the trial against Mr. Boustani – Mr. Chang's alleged co-conspirator – over three years ago”.

Manuel Chang was detained on 29 December 2018, in Johannesburg, where he was in transit to the United Arab Emirates, to spend New Year's Eve in Dubai. Three days later, on 1 January 2019, the Lebanese Jean Boustani was detained. He was a salesman for the boats of Privinvest, who negotiated the bribes of about 5 million dollars paid to Manuel Chang. Boustani was also arrested outside of his country, Lebanon. He was in the city of São Domingo, in the Dominican Republic, on holiday with his wife.

Boustani was immediately put on an aircraft by the Dominican authorities, and sent to New York, where a contingent from the FBI was waiting for him, The FBI team arrested him and took him to prison. His trial began in October of the same year, and on 2 December, the jury acquitted him.

Chang's case took a different course. He spent more than four years in prison in South Africa – the country where he was detained – waiting for a decision on his extradition. So far there has been no order for Chang to be extradited to the US, despite the final decision of the South African courts to order his extradition to the United States.

Chang's defence argues that the delay in bringing Chang to trial cannot be his responsibility because “a defendant has no duty to bring himself to trial [...] Rather, the government has an obligation to bring a case to trial swiftly, and delays resulting from deliberate prosecutorial attempts to delay trial, from prosecutorial negligence, and even from overcrowded courts all count against the prosecution”.

The defence holds the US government (Department of Justice) responsible for the delay in bringing Chang to trial,

arguing essentially that it was the US government which decided to order Chang's arrest in South Africa, when he was in transit to the United Arab Emirates. The US government knew that justice in South Africa is slow. And to justify this argument the defence cited the report from the US State Department on human rights in South Africa, which refers to the “inefficiency” of South African justice.

“The delay in Mr. Chang's trial lays at the feet of the Prosecution. The Prosecution deliberately chose to request Mr. Chang's extradition when he was in South Africa because of a layover in an international flight. By choosing South Africa as the forum for Mr. Chang's arrest and extradition, the Prosecution assumed the risk that the inefficiencies of the South African administrative and judicial systems would impair Mr. Chang's right to a speedy trial. The Prosecution cannot claim that the dilatory treatment of Mr. Chang's extradition in South Africa took it by surprise, since it was on notice that lengthy pretrial detention was common in South Africa.”

American government has lost interest in extraditing Chang

Chang's defence also argues that the US Justice Department lost interest in extraditing Chang and putting him on trial in 2019, when Jean Boustani was declared not guilty by a jury in the same court that should try Chang.

The petition submitted by Chang's lawyers to the Brooklyn court reads: “The Prosecution is particularly blameworthy here, where it appears to have lost interest in Mr. Chang's extradition and trial after its defeat at the 2019 trial of Mr. Boustani. To the knowledge of Mr. Chang's South African counsel, the Prosecution has not made any filings in the protracted litigation in South Africa over Mr. Chang's extradition since this 2019 trial. If the Prosecution has lost interest in trying Mr. Chang, it should dismiss the charges against him, not allow him to languish in solitary confinement in South Africa”.

Indeed, since 2019 the US government has ceased to plead in the South African courts for the extradition of Chang to the USA. This happened after the former South African Minister of Justice, Michael Masutha, decided to extradite Chang to Mozambique. The US did not directly oppose this decision. It was Masutha's successor, Ronald Lamola, who asked the South African High Court to reverse the decision. From then on, the Budget Monitoring Forum (FMO), a coalition of Mozambican NGOs pursued the case in the South African courts until obtaining a decision that Chang should indeed be extradited to the US.

Chang has ceased to oppose his extradition to the US

Chang's defence also argues that, since 2019, he has ceased to oppose his extradition to the USA.

“Although Mr. Chang denies all charges against him, he has been eager for an expeditious end to this protected litigation. Mr. Chang asserted his right to a speedy trial in South Africa and even informed the South African judiciary two years ago that he would abide by whatever decision the South African courts make about where to extradite him, just to bring the extradition proceedings to an end”, the petition states.

The petition ends arguing that the right to a speedy trial seeks, essentially, to protect three interests, namely, “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired,”

Meanwhile, it alleges, “Mr. Chang has suffered from all three of these forms of prejudice here. As noted above, he has spent years in solitary confinement and without proper medical care. He has spent these years living under the anxiety resulting from being under indictment. The lost time has impaired his defense, including because memories of the relevant events have likely faded during Mr. Chang's detention. The risk of fading witness memory is particularly acute here, where the bulk of the allegations relevant to Mr. Chang in the operative indictment relate to events that allegedly occurred approximately a decade ago”.

Conclusions

The petition submitted by Chang's defence to the US court shows that the former Minister of Finance is willing to fight against his extradition to the USA, and eventually, he does not intend to confess to the crimes of which he is indicted or to benefit from a possible plea bargain, as happens in the US.

On the contrary, Chang shows that he wants to use his financial resources to attempt to obtain an acquittal from a jury, instead of reaching an agreement with the US Justice Department. Chang is accused of receiving between 5 and 7 million dollars in bribes from Prinvest and seems prepared to use this money to hire good lawyers for his defence. According to the prosecution, Chang's money was transferred to foreign bank accounts, and so it remains available to him.

The American legal system allows a group of citizens with no basic knowledge about the matter being tried to take the decision to condemn or acquit a suspect, declaring him guilty or not guilty,

The complexity of the type of crimes of which Chang is accused – conspiracy to commit financial offences – makes it difficult for ordinary American citizens resident in Brooklyn (the area of jurisdiction of the court where Chang will be tried) to understand the case. And when members of the jury do not understand to what extent the accused has committed the crimes of which he is accused, and since this offends their interests, they tend to find him not guilty. This is what happened with Jean Boustani in 2019.

However, it is known that, after the acquittal of Jean Boustani in the Brooklyn court, the American prosecutors have considered transferring the trial of the other accused in the same case - Chang would be the first – to a court in Manhattan, where it is more likely that a jury will be formed which better understands the charges against the accused.

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