

# 2007/02/21 - I. ÚS 601/04: TRANSFER OF PERPETRATORS

## HEADNOTES

1) The central principle for a court's decision on the execution of a criminal judgment of a foreign state (based on international treaties) is a change in the conditions for serving the sentence, which can not result in an overall worsening of the convicted person's position. This institution of execution of the criminal judgment of a foreign state is primarily an expression of society's effort to mitigate the negative effects connected with serving a sentence abroad, sometimes in an environment that is culturally and socially different from European conditions. It is a legitimate aim of the legislature to protect its own citizens from these negative effects, going beyond the framework of the effects that belong to a particular type of punishment based on its own nature. The purpose of steps by the state that permit the execution of a foreign criminal judgment on its own territory is thus primarily a humanitarian influence on the convicted person, whose aim is to remove the excess of negative influences, at his own request, but not the reduction of a sentence, especially when preserving the length of a sentence is an express condition of the transferring state.

2) The Constitutional Court emphasizes that cruelty and inhumanity of treatment or punishment can not be measured according to criteria given in advance, but always by thoroughly weighing all circumstances of a case. However, generally we can assume that inhuman and cruel treatment or punishment is always a combination of various factors that culminate in an individual's intense physical and psychological suffering. However, merely serving a long prison sentence, if it takes place in an environment that respects human dignity, is not, in and of itself, cruel or inhuman treatment, if it is not accompanied by other serious (objective) inadequacies in the manner in which that sentence is served, as is standardized in the civilized world, or by the prisoner's serious health and psychological problems.

3) When the exclusive judicial authority of the state transferring the perpetrator to serve his sentence is expressly preserved, the judicial body that decides on execution of the judgment does not have the same position as the judicial body that imposed the sentence. Thus, the Czech authorities can not decide on objections aimed essentially against the Thai conviction decisions, because the Czech Republic would then be in conflict not only with the principle *pacta sunt servanda*, but also with the principle of good faith, which are the foundation stone of international treaty law, and their importance is strengthened by the fact that they have been incorporated in the preamble of the UN Charter. The principle of good faith is a fundamental rule of interpretation in the analysis of the texts of international obligations. They must be interpreted in good faith, taking into account the entire context of the treaty, and in light of the aim and purpose for which it was concluded. The aim and purpose of the treaty concluded between the Thai Kingdom and the Czech Republic was to bring the petitioner, at his request, to his home environment,

closer to his family and friends, and enable him to serve the remainder of his sentence at home, in his native land. Therefore, in that light, the petitioner's request, that the Constitutional Court annul the decisions of the Czech general courts and release the petitioner, will not stand. If the Constitutional Court granted the petitioner's request, it would violate not only Art. 1 par. 1 and par. 2 of the Constitution of the Czech Republic, but also its trustworthiness in international relations.

**CZECH REPUBLIC  
CONSTITUTIONAL COURT  
JUDGMENT**

**IN THE NAME OF THE CZECH REPUBLIC**

A Panel of the Constitutional Court composed of the chairman Vojen Güttler and judges Ivana Janů and František Duchoň ruled on this day in the matter of a constitutional complaint by the petitioner E. N., represented by JUDr. T. S., attorney, against a decision by the Municipal Court in Prague of 22 April 2004, file no. 6 To 162/2004, against a decision by the District Court of Prague 6 of 2 March 2004, file no. 3 T 127/2003, in its entirety, or, in the alternative, only in the verdict about the fact that the petitioner committed a crime under § 187 par. 1, par. 2 let. a) of the Criminal Code, with the participation of the Municipal Court in Prague and the District Court of Prague 6, as follows:

**The constitutional complaint is denied.**

**REASONING**

**I.**

1. In his timely and duly filed constitutional complaint the petitioner contested the decisions of the general courts cited in the introduction, and proposed that the Constitutional Court annul them.

2. The decision of the District Court of Prague 6 of 2 March 2004, file no. 3 T 127/2003, decided in the petitioner's matter on execution of a decision under § 384d par. 1 of the Criminal Procedure Code (in the version in effect through 31 October 2004) with reference to the text of the Treaty between the Czech Republic and the Thai Kingdom on the Transfer of Perpetrators and Cooperation in the Execution of Criminal Judgments, promulgated as no. 107/2002 Coll.I.A. [Collection of International Agreements] (further identified by its full name or only the "Treaty") given the existence of an unchanged verdict on guilty and sentencing from the verdict of the Criminal Court of the Thai Kingdom of 21 July 1995, file no. 2806/2538-4493/2538 (the "Thai decision"), in connection with the decision of the Provincial Court of Nonthaburi of 12 July 1996, file no. 2806/2538-4493/2538 (both together, the "Thai decisions") on a crime under § 4, § 7, § 8, § 15 par. 2, § 65 par. 2, § 66 par. 2, § 102 of the Act on Dangerous Narcotic Substances from 1979, § 3, §

7 of the Act on Measures to Suppress the Activities of Persons Committing Crimes in Connection with Drugs from 1991 and § 33, § 80, § 90 of the Criminal Code, which he was to have committed, in brief, by attempting to transport out of the territory of the Thai Kingdom, on an airline, 5,607 grams of heroin for purposes of further distribution, whereby he committed, under the Criminal Code of the Czech Republic, the crime of non-permitted production and possession of narcotic and psychotropic substances and poisons under § 187 par. 1, par. 2 let. a) of the Criminal Code, and therefore, under § 384d par. 2 of the Criminal Procedure Code the petitioner is to serve a prison sentence of forty two years, ten months and thirteen days. Under § 39a par. 2 let. c) of the Criminal Code he is assigned to serve his sentence in a high security prison.

3. The decision of the Municipal Court in Prague of 22 April 2004, file no. 6 To 162/2004, ruled on the petitioner's appeal, and denied it under § 256 of the Criminal Procedure Code.

4. The petitioner claims that the cited decisions violated his fundamental rights guaranteed by Art. 7 par. 2 and Art. 8 par. 2 of the Charter of Fundamental Rights and Freedoms and Art. 3 and Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

5. The relevant provisions of the Charter of Fundamental Rights and Freedoms read as follows:

#### Article 7

(2) No one may be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

#### Article 8

(2) No one may be prosecuted or deprived of his liberty except on the grounds and in the manner specified by law. No one may be deprived of his liberty merely on the grounds of inability to fulfill a contractual obligation.

6. The relevant provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms read as follows:

#### Article 3

##### Prohibition of Torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### Article 6

##### Right to a Fair Trial

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

(3) Everyone charged with a criminal offence has the following minimum rights:

- a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b) to have adequate time and facilities for the preparation of his defence;
- c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

7. In the constitutional complaint, the petitioner basically formulated his objections into two areas. For one thing, according to the petitioner, the general courts decided that he had committed the crime of non-permitted production and possession of narcotic and psychotropic substances and poisons under § 187 par. 1, par. 2 let. a) of the Criminal Code, even though that decision was not preceded by a fair trial, and for another, the general courts accepted a sentence whose length is quite outside the scope of sentences imposed for a similar offense in the Czech Republic, and the petitioner considers the sentence to be cruel and inhuman.

8. In relation to the first objection, as regards the substance of the court's decision under § 384d par. 1 of the Criminal Procedure Code, the petitioner points to the fact that he was convicted of a crime under the Czech Criminal Code, although under § 220 par. 1 of the Criminal Procedure Code a court can make such a decision only about a fact that is contained in the complaint. In this matter a complaint was not filed, because the petitioner was not even told of the accusation. However, the accusatory principle is one of the fundamental principles of a fair trial. This objection is tied to the petitioner's proposal that the Constitutional Court annul the decision of the Municipal Court in Prague of 22 April 2004, file no. 6 To 162/2004, and the verdict that the petitioner committed the crime of non-permitted production and possession of narcotic and psychotropic substances and poisons under § 187 par. 1, par. 2 let. a) of the Criminal Code, contained in the decision of the District Court of Prague 6 of 2 March 2004, file no. 3 T 127/2003.

9. In the constitutional complaint, the petitioner explains in more detail the objection that the sentence that he is to serve in the Czech Republic is disproportionate and cruel. He emphasizes that the District Court for Prague 6 itself concluded, although it was not authorized to do so, that the act described in the decision would have been classified in the Czech Republic as the crime of non-permitted production and possession of narcotic and psychotropic substances and poisons under § 187 par. 1, par. 2 let. a) of the Criminal Code, for which he would face, in the most extreme case, a prison sentence of ten years. In the decision contested by the constitutional complaint, the District Court for Prague 6 accepted a prison sentence of forty two years, ten months and thirteen days, out of which approximately nine years have been served, including the time spent in detention. In view of the purposes of a sentence defined in § 23 par. 1 of the Criminal Code the petitioner sees the intent of the legislature that the imposition of a prison sentence of a maximum of ten years is sufficient in scope to fulfill its purposes.

Therefore, the petitioner considers the key question to be what is the priority in a case of conflict between two different ideas of the need for a sentence to have an effect on the convicted person, and thus also two ideas about what is a proportionate sentence. By comparing his sentence to the length of the possible sentence that he would receive under the Czech Criminal Code, the petitioner concludes that his sentence is grossly disproportionate, cruel, and even inhuman. As a result, it is therefore outside the guarantees provided by the Charter of Fundamental Rights and Freedoms and by the Convention for the Protection of Human Rights and Fundamental Freedoms.

10. As the petitioner states further, the Supreme Court decided that the sentence imposed by a court of the Thai Kingdom can be served in the territory of Czech Republic. Apparently it was thus that court who erred in the matter, because it accepted a disproportionate sentence. However, in the petitioner's opinion the Supreme Court decided only to recognize the decision of a foreign court in the territory of the Czech Republic, not that the sentence thus recognized will also be served, or whether that sentence is consistent with the constitutional order of the Czech Republic. Although the Criminal Procedure Code does not regulate the procedure to be followed when a court concludes that a recognized sentence is cruel, inhuman, or otherwise inconsistent with the constitutional order of the Czech Republic, in the petitioner's opinion the court must always act with respect for constitutional principles. Because the petitioner acknowledges that the court is not authorized to reduce the sentence, he considers the only possible solution for the court to decide that the sentence will not be served in the territory of the Czech Republic and that the convicted person will be released. In view of these arguments the petitioner asks the Constitutional Court to annul both the contested decisions in their entirety, or to annul the decision of the Municipal Court in Prague of 22 April 2004, file no. 6 To 162/2004, and the decision of the District Court of Prague 6 of 2 March 2004, file no. 3 T 127/2003, in the verdict that states that the petitioner committed a crime under § 187 par. 1, par. 2 let. a) of the Criminal Code. The petitioner also stated that he has filed an appeal on a point of law in the matter and an application for a complaint on violation of the law.

11. For reasons of procedural carefulness, the petitioner again made his petition at the Constitutional Court in a filing delivered on 16 May 2005 after the Supreme Court ruled that his appeal on a point of law was denied as impermissible.

## II.

12. The Constitutional Court, pursuant to § 42 par. 4 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the "Act on the Constitutional Court"), sent the constitutional complaint to the parties to the proceeding and to the secondary parties to the proceedings, for their responses. In its response to the constitutional complaint, the Municipal Court in Prague referred in full to the reasoning of the contested decision (p. no. 27). The District Court for Prague 6, as a party to the proceedings, likewise merely referred to the legal opinion stated in the contested decision (p. no. 28). The secondary party to the proceeding on the constitutional complaint, the District Prosecutor's Office for Prague 6, after the deadline set by the Constitutional Court, and without more

detail, proposed denying the constitutional complaint (p. no. 41). In view of the fact that these parties to the proceeding and the secondary party to the proceeding did not submit any new evidence to the Constitutional Court, nor did they submit any new claims related to the substance of the constitutional complaint, the Constitutional Court did not send these appendices to the petitioner for an answer. The petitioner was acquainted with the entire content of the file through his legal representative on 1 February 2007 (p. no. 72).

13. The Municipal Prosecutor's Office in Prague relinquished its status as a secondary party (p. no. 37).

14. The Constitutional Court also, with reference to § 48 par. 2 of the Act on the Constitutional Court requested a position statement from the International Department of the Ministry of Justice (the "Ministry") (p. no. 46). In the first part of its statement the Ministry pointed out that the Treaty between the Czech Republic and the Thai Kingdom on the Transfer of Perpetrators and Cooperation in the Execution of Criminal Judgments, promulgated as no. 107/2002 Coll.I.A., is an international treaty that is, as regards the purposes and aims stated in the preamble, not different from other international agreements concerning the transfer of convicted persons to which the Czech Republic is a party [The Convention on the Transfer of Convicted Persons of 23 March 1983 (no. 553/1992 Coll.), the Protocol to the Convention on the transfer of Convicted Persons of 18 December 1997 (no. 26/2003 Coll.I.A., notification of correction of errors in the translation in part 49/2003 Coll.I.A.), the Convention on Transfer of Persons Convicted to a Prison Sentence to Serve the Sentence in the State Where They are Citizens, of 19 May 1978 (no. 123/1978 Coll.), the Agreement between the Czechoslovak Socialist Republic and the Socialist Federal Republic of Yugoslavia on the Mutual Transfer of Convicted Persons to Serve Prison Sentences of 23 May 1989 (no. 473/1990 Coll.), the Agreement between the Czech and Slovak Federal Republic and the Austrian Republic on the Mutual Execution of Court Decisions in Criminal Matters of 20 May 1990 (no. 113/1992 Coll.), and the Agreement between the Czech Republic and the Slovak Republic on Legal Assistance Provided by Judicial Bodies and Regulating Certain Legal Relationships in Civil and Criminal Matters of 29 October 1992 (no. 209/1993 Coll.)].

15. According to its statement, the Ministry considers the constitutional complaint to be considerably confused, because the contested decision does not contain any verdict concerning guilt. The Ministry considers the description of the act, as provided in the contested decision, to be a mere repetition of the description as stated by the Thai courts. According to the Ministry the formulation of the verdict section of the contested decision is perhaps somewhat unfortunate; nevertheless it is evident from the reasoning that the court did not rule on the petitioner's guilt. The Ministry believes that the constitutional complaint is de facto partly aimed against the verdict recognizing the Thai decisions, as contained in the decision by the Supreme Court of 22 May 2003, file no. 11 Tcu 103/2003. The statement by the District Court of Prague 6 of 2 March 2004, file no. 3 T 127/2003, that the petitioner's crimes correspond to the classification under § 187 par. 1, par. 2 let. a) of the Criminal Code, is therefore evidently redundant. At the same time, the Ministry expressed its belief that serving such a long sentence in Thai prisons would not be a more proportionate or humane alternative, and also that the petitioner

was transferred to the Czech Republic at his own request, and his transferred was guided by, among other things, humanitarian motives. A decision that the petitioner will not serve the full length of the sentence imposed by the Thai courts would be in conflict with Art. 6 par. 2 of the Treaty.

16. In his written answer to the Ministry's statement (p. no. 55-58), the petitioner again pointed to the text of the verdict in the contested decision, whereby, according to the petitioner, the District Court for Prague 6 decided that a crime was committed, not only on the execution of a decision under § 384d par. 1 of the Criminal Procedure Code (in the version in effect through 31 October 2004), regardless of the fact that the words "is guilty" are absent from the contested decision. The petitioner emphasizes that, in view of the text of Art. 6 par. 2 of the Treaty, under which the receiving state is bound by the legal nature and length of the sentence, the verdict of the District Court of Prague 6 is not only redundant, but also illegal. Finally, the petitioner states that the Ministry's statement regarding the humanitarian aspect of receiving a convicted person under the Treaty is based on a failure to understand the essence and purpose of a sentence. He maintains his opinion that, although a sovereign state has the right to determine the severity of a sentence for criminal conduct, in this case the sentence imposed can be considered disproportionate, even cruel and inhuman in the context of the Czech legal order.

17. During the hearing before the Constitutional Court the petitioner did not propose presenting any further evidence. In his closing statement the petitioner's attorney stated that he respects the status of the Constitutional Court as a body for the protection of only constitutional rights. According to the petitioner, the history of the matter so far confirms the objection that the actions of the general court, which did not conduct a fair trial, were unconstitutional. According to the petitioner, the Valdice prison still has on record the sentence imposed by the district court, of 42 years. He emphasized that formally there is a decision by the district court that the petitioner committed a crime, for which he was sentenced. That situation is unconstitutional in and of itself, because the petitioner is thus viewed as having been convicted by a Czech court under Czech law. In relation to the objection of a cruel and inhuman sentence, the attorney added that serving a sentence in Czech prisons is indisputably more acceptable than serving it in Thai prisons. However, the sentence being served is several times longer than the sentence that it would be possible to impose for a similar crime in the Czech Republic. On principle it is thus a cruel sentence. Therefore the petitioner maintains his proposal.

### III.

18. From the file of the District Court of Prague 6 file no. 3 T 127/2003 the Constitutional Court also determined that on 21 June 1995, file no. 2806/2538-4493/2538, the petitioner was convicted by the Criminal Court of the Thai Kingdom for a drug offense under the Act on Dangerous Narcotic Substances (another translation: the Act on Narcotics and Narcotic Poisons) from the year 2522 of the Brahman calendar (1979 A.D.) to a prison sentence of fifty years and a sentence of

confiscation of an exhibit.

19. By decision of the Provincial Court of Nonthaburi of 12 June 1996, file no. 2806/2538-4493/2538, the petitioner's sentence was reduced, based on a royal pardon from King Bhumibol Adulyadej (Rama IX) by one seventh, i.e. to 42 years, 10 months and 13 days. In a filing dated 25 September 2002 in Bangkok the petitioner applied, in accordance with the text of the Treaty between the Czech Republic and the Thai Kingdom on the Transfer of Perpetrators of Crimes and on Cooperation in the Execution of Criminal Judgments of 26 April 2000 to begin the process of transfer to the Czech Republic for execution of the sentence.

20. The decision of the Supreme Court of 22 May 2003, file no. 11 Tcu 103/2003, recognized both of the above mentioned Thai decisions in the territory of the Czech Republic, under § 384a par. 1 of the Criminal Procedure Code (in the version in effect through 31 October 2004). On 13 January 2004 the petitioner was escorted from the Thai Kingdom to the Czech Republic, and after a hearing before the District Court for Prague 6 he was taken into custody under § 384c par. 2 of the Criminal Procedure Code (in the version in effect through 31 October 2004). On 2 March 2004 the District Court for Prague 6, and subsequently the Municipal Court in Prague made the decisions contested by the constitutional complaint, as stated above. The Supreme Court decided on the appeal on a point of law that the petitioner filed concurrently, in its decision of 24 February 2005, file no. 11 Tdo 211/2005, and denied it under § 265i par. 1 let. a) of the Criminal Procedure Code.

21. It is also evident from the file of the District Court of Prague 6 and from documents sent by the Ministry of Justice that in the period after the constitutional complaint was filed, the Provincial Court in Nonthaburi decided, on 6 October 2004, under file no. BKh.Ph. 2988/2547, that the royal pardon on the occasion of the birthday of the Thai queen Sirikit reduced the petitioner's total sentence by one-sixth, to 35 years, 8 months and 18 days. In the execution proceeding under § 455 par. 7 of the Criminal Procedure Code the District Court for Prague 6, on 19 September 2005, by decision file no. 3 T 127/2003, reduced the sentence accordingly. The documents requested by the Constitutional Court from the file of the International Department of the Ministry of Justice, file no. 1122/05-MO-M, also indicate, that on the occasion of the 60th anniversary of the ascension to the throne of the Thai king, Bhumibol Adulyadej (Rama IX), the petitioner received an additional royal pardon, reducing the sentence by 5 years, 11 months and 13 days. Thus, under the decision of the Provincial Court of Nonthaburi, file no. BorKhor.OrPhor. 2726/2549, of 11 August 2006 the total length of the sentence given to the petitioner by the Thai courts is 29 years, 9 months and 5 days.

22. The Constitutional Court states that the constitutional complaint meets the requirements provided by the Act on the Constitutional Court, and as such it reviewed it for the claimed violation of the petitioner's rights. It concluded that the constitutional complaint can not be granted.

#### IV.

##### Statutory Basis for the Contested Decisions

23. The Constitutional Court must first point out that it is not a body for the protection of any kind of subjective rights, but a body for the protection of constitutionality, which follows from its settled case law (available at <http://www.judikatura.cz>), based, in that sense, on Art. 83 of the Constitution, which defines the role of the Constitutional Court. The Constitutional Court is also not a part of the general court system, and therefore can not replace them in any phase of proceedings or conduct itself as another level of them; thus, the Constitutional Court can not assume to itself the right of review of their activities.

24. In the presently adjudicated matter the Constitutional Court does not dispute the petitioner's opinion that the objections raised in the constitutional complaint can generally be applied against the contested decisions by the general courts on the execution of a decision by a foreign court, and against the decision by the Supreme Court of 22 May 2003, file no. 11 Tcu 103/2003. Because under § 384a par. 1 of the Criminal Procedure Code (in the version in effect through 31 October 2004) it decided to recognize a decision by a foreign court, it would, in the Constitutional Court's opinion, be possible to also raise the possible violation of and individual's fundamental rights and freedoms against the decision by the Supreme Court, because in that kind of proceedings (§ 384a of the Criminal Procedure Code in the version in effect through 31 October 2004) the Supreme Court must decide with respect for the constitutional order and the fundamental rights and freedoms guaranteed in it, and interpret and apply a legal regulation as much as possible in accordance with the essence of the fundamental rights and freedoms. At the same time, it is evident from the mechanism contained in the Criminal Procedure Code (in the version in effect through 31 October 2004) that a decision to recognize a decision by a foreign court is a necessary prerequisite for a court decision to execute the decision of a foreign court (§ 384a of the Criminal Procedure Code in the version in effect through 31 October 2004), so these are decisions that relate to each and are related in content. Thus, the protection of mandatory fundamental rights can not be reduced in any phase of proceedings under Part Five of the Criminal Procedure Code (in the version in effect through 31 October 2004).

25. The decision of the District Court of Prague 6 in the matter of execution of a decision by a foreign court in the petitioner's matter was made on the basis of § 384d of the Criminal Procedure Code, which read as follows:

§ 384d

(1) The relevant court under § 14 to 18 shall rule on the execution of a decision by a foreign court in a public session by a decision. The convicted person must always have defense counsel in these proceedings.

(2) A sentence can be served in the Czech Republic in a greater scope than that permitted by Czech laws, if an international treaty by which the Czech Republic is bound so provides.

26. Such a treaty is the Treaty between the Czech Republic and the Thai Kingdom on the Transfer of Perpetrators and Cooperation in the Execution of Criminal

Judgments, signed on 26 April 2000 in Bangkok and promulgated as no. 107/2002 Coll.I.A. In relation to the objections in the constitutional complaint, the Constitutional Court considers it suitable to quote these articles from it:

#### Article 5

##### Preservation of Judicial Authority

As regards sentences that are to be served under this treaty, the transferring state shall keep the exclusive judicial authority concerning the decisions of its courts that imposed the sentences and any proceedings to review, adjust, or annul these decisions and sentences.

#### Article 6

##### Proceedings When a Sentence is Being Served

(1) Continuation of serving a sentence shall be governed by the regulations and procedures of the receiving state, including those that regulate the conditions for serving a prison sentence, protective measure, or other measure restricting a person's liberty, and regulations that reduce the length of a prison sentence, protective measure or other measure restricting a person's liberty by release on one's own recognizance, conditional release, pardoning of a sentence.

(2) Except as provided in paragraph 3 of this article, the receiving state shall be bound by the nature and length of a sentence as imposed by the receiving state.

(3) No prison sentence shall be served in the receiving state so as to lengthen the period of the sentence provided in the decision of the court of the transferring state. The sentence served shall correspond as much as possible to the sentence imposed in the transferring state.

### V.

#### Objections against the Formal Requirements of the Decision

27. In relation to the petitioner's object that the District Court for Prague 6 decided inconsistently with the accusation principle, or completely without a preceding criminal proceeding under the Czech Criminal Procedure Code, the Constitutional Court must point to the quite different purpose and particular concept of both the proceedings on execution of a decision by a foreign court under Part Five of the Criminal Procedure Code, in the version then in effect, and of criminal proceedings, all of whose phases take place before domestic bodies active in criminal proceedings, culminating in a court decision on guilt and sentencing.

28. Although the execution of foreign decisions is a proceeding under the Criminal Procedure Code, its purposes, in contrast to the general definition of the purpose of the Criminal Procedure Code (§ 1 of the Criminal Procedure Code) is defined essentially differently, and narrowly. Conceptually, and given the substance of the matter, there can not be a concentrated (re)fulfillment of all principles governing the criminal proceedings before the court that rules on the execution of a foreign court's decision. Such a concentration would necessarily have to lead to performance of all steps, beginning with the opening of criminal prosecution, and ending with a decision on the merits. In that case there would de facto be a new proceeding, and in that regard there would be, at a minimum, violation of the

principle *ne bis in idem*. However, in proceedings on execution of foreign decisions a domestic court, in practice, continues the proceedings that took place and was completed with binding effect by a valid and executable decision by the relevant court in the foreign country whose jurisdiction is recognized in the matter as regards a verdict on guilt and sentencing; it does not decide on guilt and does not impose a sentence. Thus, in principle, the decision of a domestic court is continued in the serving of the sentence imposed by the decision of the foreign state.

29. In his arguments, the petitioner points to the fact that the decision of the District Court of Prague 6 included in the verdict a statement that the petitioner, through the conduct described in the decisions by courts of the Thai Kingdom, committed, “under the Criminal Code of the Czech Republic, the crime of non-permitted production and possession of narcotic and psychotropic substances and poisons under § 187 par. 1, 2 let. a) of the Criminal Code, and, under § 384d par. 2 of the Criminal Procedure Code, shall serve a prison sentence of forty two years, ten months and thirteen days.” It is quite clear from the verdict of the contested decision (as it is contained without details of the facts in the second paragraph in the reasoning of that judgment) and from the reasoning, that the District Court for Prague 6 ruled in a proceedings pursuant to section five, chapter twenty one of the Criminal Procedure Code, in the version in effect through 31 October 2004, i.e. on execution of a decision by a foreign court. The verdict of that judgment refers to § 384d of the Criminal Procedure Code twice, and the District Court for Prague 6 also expressly states that it is deciding “given an unchanged verdict on guilt and sentencing” from the further specified decisions by courts of the Thai Kingdom.

30. Based on reviewing a number of documents in the relevant court file, the Constitutional Court tends to believe that the petitioner, represented by a qualified attorney, had not grounds for serious doubts about the nature and essence of the proceedings conducted before the District Court in Prague 6. In his appeal, the petitioner already raised an objection analogous to that in the constitutional complaint. In that regard, the Municipal Court in Prague, ruling in the appeal proceedings, stated that “with this verdict the district court (note: in Prague 6) only confirmed the requirement for the application of the Treaty between the Czech Republic and the Thai Kingdom on the Transfer of Perpetrators and Cooperation in the Execution of Criminal Judgments under Article 3 let. a), consisting particularly of the requirement that the acts for which a sentence was imposed meet the elements of a crime under the legal regulations of the receiving state.”

31. The Constitutional Court is of the opinion that the question of meeting the conditions given by the Treaty between the Czech Republic and the Thai Kingdom on the Transfer of Perpetrators and Cooperation in the Execution of Criminal Judgments was already decided with binding effect by the Supreme Court, in its decision of 22 May 2003, file no. 11 Tcu 103/2003, in which it decided to recognize the abovementioned decisions by the courts of the Thai Kingdom. In that light, the cited part of the verdict from the contested judgment of the District Court of Prague 6 appears redundant, although consistent with the cited Supreme Court decision; in any case it appears to have no effect on the petitioner’s constitutional rights. The Constitutional Court considers this objection by the petitioner to be a mere formalistic criticism, which is not capable of justifying annulment of the

contested decisions in the scope proposed, due to inconsistency with the rights and freedoms guaranteed by the constitutional order.

## VI.

32. In the substantive part of the reasoning for the constitutional complaint, the petitioner concludes that the contested decision violated his fundamental right to not be tortured or subjected to cruel, inhuman, or degrading punishment.

33. Thus, it was the task of the Constitutional Court to determine whether the decision made by the Czech Courts, to execute the Thai judgment, violated the petitioner's fundamental rights, in particular in view of the length of the prison sentence. The following was taken into consideration.

### VI.a

#### *Pacta Sunt Servanda*

34. The Constitutional Court states that the Czech Republic is bound by international agreements, as follows from Art. 1 par. 2 of the Constitution, under which "The Czech Republic shall observe the obligations by which it is bound under international law." This provision reflects, among other things, the general natural law principle accepted by the international community, *pacta sunt servanda*, i.e. agreements should be observed. The degree to which a particular state respects this principle is not only a contribution to strengthening its own legal environment where citizens have confidence in the law, but also a measure of the state's trustworthiness in the international community. It indicates a certain predictable conduct by the subjects of international law, and permits the mutual expectation in good faith that the commitments arising from international agreements will be met, within the framework of the international *ius cogens*. A certain order arising from international agreements appears to be the most suitable environment for international cooperation, and within that, the protection of a state's interests, be they cultural, economic, political, or humanitarian. Violation of international commitments therefore does not lead only to international responsibility under international law, but also to loss of the confidence of the international community and to a worsening of cooperation between states.

35. The Czech Republic has a duty to observe its obligations arising from Art. 6 of the Treaty between the Czech Republic and the Thai Kingdom on the Transfer of Perpetrators and Cooperation in the Execution of Criminal Judgments, published as no. 107/2002 Coll. I.A., regardless of the domestic legal framework for substantive criminal law, as the petitioner points out, or, more precisely, regardless of the length of sentence that the legislature specified for similar conduct under the Czech Criminal Code. The Czech Republic, as a party to the Treaty, when signing it was undoubtedly aware of its domestic law and existing international obligations (e.g. from the Convention for the Protection of Human Rights and Fundamental Freedoms), and with that awareness it undertook to fulfill the purpose of the treaty, i.e. to permit foreigners who were imprisoned as a result of committing a crime to serve their sentence in their own country. It can be assumed that failure

to fulfill the obligations arising from the Treaty would in future make it more difficult, if not completely impossible, to implement the substance of this exchange mechanism in the case of other Czech citizens convicted and serving their sentence in the Thai Kingdom.

#### VI.b

##### Conflict of International Obligations

36. The core of the petitioner's arguments indicates that although he himself initiated procedures under the Treaty between the Czech Republic and the Thai Kingdom on the Transfer of Perpetrators and Cooperation in the Execution of Criminal Judgments, he de facto considers comprehensive performance of obligations under § 384d of the Criminal Procedure Code, in the version in effect through 31 October 2004 (and also corresponding to Art. 5 of the Treaty, under which the Thai Kingdom retained exclusive judicial authority in the petitioner's matter, and, in particular, Art. 6 par. 2 of the Treaty, concerning the Czech Republic's obligation to respect "the legal nature and length of the sentence"), as the executed Thai decisions provide, to be inconsistent with other obligations of the Czech Republic, which are based in the cited provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, and similarly in the Charter of Fundamental Rights and Freedoms. In this case the Constitutional Court on a general level agrees with the petitioner's implicit starting point, that in the event of a conflict between obligations from treaties on the protection of human rights and obligations from international treaties, the obligation to protect fundamental rights always has priority. "Respect for and protection of fundamental human rights are defining elements of a substantively understood law-based state; therefore, in the event that a contractual obligation protection a fundamental right and a contractual obligation that is aimed at endangering that right, the first obligation must prevail," as the Constitutional Court concluded, with reference to Art. 1 par. 1 of the Constitution, in judgment file no. I. US 752/02 (judgment of 15 April 2003, available at <http://www.judikatura.cz>). Thus, the obligation to protect a fundamental right understandably limits the interpretation and application of a domestic legal framework (§ 384d of the Criminal Procedure Code, in the version in effect through 31 October 2004), even though it expressly permits a procedure pursuant to an international treaty. However, in the presently adjudicated matter the Constitutional Court did not conclude that a conflict between the Czech Republic's international law obligations exists, as explained below.

#### VI.c

##### Exclusive Judicial Authority of the Thai Court

37. The traditional doctrine for analyzing relations in the area of international cooperation in criminal matters is based on the principle of the equality of sovereign states. An accompanying element of this internal sovereignty is the power to provide or find law, and subsequently to exercise these findings, generally called jurisdiction. Fundamental factors limiting state jurisdiction are the principle of territoriality, aimed at execution of state authority (only) in the state's territory and in its borders, as well as the principle of passive personality, active personality, the principle of protection, and the principle of universality (with

reference to other authors, e.g. Kloučková, S. - Fenyk, J.: Mezinárodní justiční spolupráce v trestních věcech [International Judicial Cooperation in Criminal Matters], 2nd updated and amended edition, Linde Praha, 2005, pp. 15-20, pp. 407-408). The execution of a judgment from one state in the territory of a foreign state necessarily leads to conscious and voluntary weakening of the sovereignty of the state in whose territory the foreign judgment will be executed. A state's right to prosecute the crimes committed in its territory through its own legal order is, in the case of some serious crimes, a mere authorization, but also an obligation upon the state, arising from international treaties. The agreement in the international community as to the seriousness of conduct related to business with drugs and psychotropic substances was expressed in a number of international law documents, especially in the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed on 20 December 1988 in Vienna. In accordance with fundamental sovereign equality and territorial inviolability of states and the principle of not interfering in the domestic affairs of other states, the parties to that Treaty undertook to criminally prosecute a range of actions connected with the manufacture of drugs and psychotropic substances, and the subsequent trade in and distribution of them. The parties are also bound to set such sentences for these crimes, including, e.g., prison sentences, that will take into consideration the social gravity of these crimes. Decision-making authority in such criminal matter is supposed to be exercised for purposes of attaining the maximum effectiveness of enforcement measures for those crimes, as well as in view of the urgent need to prevent the commission of such crimes.

38. In Article 5 of the Treaty between the Czech Republic and the Thai Kingdom on the Transfer of Perpetrators and Cooperation in the Execution of Criminal Judgments the parties expressly preserved their exclusive judicial authority concerning the judgments made by their courts, the sentences imposed by these courts, and any proceedings to review, amend, or annul these judgments and sentences.

39. In the case of proceedings on the execution of a criminal judgment by a foreign state, when the exclusive judicial authority of the state transferring the perpetrator to serve his sentence is expressly preserved, the judicial body that decides on execution of the judgment does not have the same position as the judicial body that imposed the sentence. Because the court of the receiving state decides only on the (continuation of) serving of the sentence, it fundamentally can not decide on any objections against the already effective decisions on guilty and the length of the sentence. Objections against the length of a prison sentence, with reference to the differing legal orders of the transferring and receiving state are fundamentally not subject to review on proceedings under § 384d of the Criminal Procedure Code (in the version in effect through 31 October 2004).

#### VI.d

#### Basic International Standards for Transfer of a Person for Execution of a Criminal Judgment

40. In a case of implementing the transfer of a perpetrator for execution of a judgment by a foreign state to the receiving state, especially in the case of states

from different social-cultural circles, questions always necessarily arise about the compatibility of the legal orders, principles controlling criminal punishment, or other social norms. The states, motivated for a number of reasons by the interest in a functioning mechanism for mutual transfer of convicted persons for the execution of criminal judgments - to serve a sentence, as a rule, in the state where the perpetrator is a citizen - have formulated rules in international agreements that are to limit the negative effects of that process on the convicted (transferred) persons. Such negative effects are primarily any overall worsening of conditions and the substance of serving a sentence by the convicted person in the receiving state, compared to the situation in which the convicted person found himself in the transferring state. Such overall worsening of the convicted person's situation can have a number of causes stemming from the differences between the legal system.

#### VI.e

##### Cruel, Inhuman Punishment, and Degrading Punishment

41. The Convention for the Protection of Human Rights and Fundamental Freedoms, in Art. 3, and the Charter of Fundamental Rights and Freedoms, in Article 7 par. 2, on which the petitioner relies, contain a prohibition on torture and other forms of cruel, inhuman, and degrading treatment, with no exceptions (cf. Art. 15 par. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms). A similar prohibition is contained in two other international law documents (The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated as no. 143/1988 Coll.). However, none of the provisions which the petitioner cites contains a more detailed definition or delineation of particular conduct or the relationship between the concepts "torture," "cruel," "inhuman," and "degrading."

42. The Constitutional Court emphasizes that cruelty and inhumanity of treatment or punishment can not be measured according to criteria given in advance, but always by thoroughly weighing all circumstances of a case. However, generally we can assume that inhuman and cruel treatment or punishment is always a combination of various factors that culminate in an individual's intense physical and psychological suffering. However, merely serving a long prison sentence, if it takes place in an environment that respects human dignity, is not, in and of itself, cruel or inhuman treatment, if it is not accompanied by other serious (objective) inadequacies in the manner in which that sentence is served, as is standardized in the civilized world, or by the prisoner's serious health and psychological problems. However, the petitioner did not claim any such facts in the constitutional complaint.

#### VI.f

##### Proportionate Length of the Sentence

43. In the present case, the question raised by the petitioner about the proportionateness of the length of the prison sentence, or its "gross disproportionateness," in relation to the maximum permissible sentence contained in the Czech Criminal Code for similar conduct, was not, and could not have been,

subject to review by the district court or the municipal court, nor is it a constitutionally relevant objection in the proceeding before the Constitutional Court. The petitioner was not sentenced by a Czech court, but, as a Czech citizen, by a court of the Thai Kingdom, for an intentional crime that he committed in the territory of the Thai Kingdom, and under the legal order of the Thai Kingdom. In our time, even a person without legal education has sufficient knowledge to realize that different countries have different legal orders, corresponding to the particular history of the particular country and its social, economic, and cultural development, i.e. including possible differences in punishment for crimes. In the case of a serious crime, on whose elements the international community is in agreement, the decisive factor is not only the subjective feeling of “gross disproportionateness” of the sentence being served in comparison to a reference level that the petitioner himself determines, e.g. by reference to the sentencing levels contained in the (Czech) criminal code.

44. Insofar as the petitioner concludes that the punishment is proportionate or disproportionate based on the will of the Czech legislature expressed in the law, i.e. when he claims that the Czech legislature expressed its idea of a proportionate punishment for conduct analogous to the petitioner’s in § 187 of the Criminal Code (the crime of non-permitted manufacture and possession of narcotic and psychotropic substances and poisons), where, according to the petitioner, sentencing standards with a maximum of ten years would be applied, and thus in comparison with that provision the sentence being served appears disproportionate, cruel, or inhuman, the Constitutional Court must equally point to the will of the legislature expressed in other provisions, where it expressly enacted in § 384d par. 2 of the Criminal Procedure Code, in the version in effect through 31 October 2004, the possibility of serving in the Czech Republic a sentence that is longer than that permitted by Czech law, if provided by an international treaty. Likewise, the Constitutional Court believes that the legislature expressed its will at the point when it expressed consent with the Treaty between the Czech Republic and the Thai Kingdom on the Transfer of Perpetrators and Cooperation in the Execution of Criminal Judgments, signed in Bangkok on 26 April 2000, which contains provisions on the binding nature of the length of a sentence as imposed by the transferring state (Art. 6 par. 2 of the Treaty), and also approved the Treaty at a time when it was aware of the fate of this particular petitioner (see the transcript from the session of the Chamber of Deputies of the Parliament of the CR of 15 February 2002 concerning Chamber of Deputies Publication no. 1018, available at <http://www.psp.cz>, and the transcript of the session of the Senate of the Parliament of the CR of 15 March 2002 concerning Senate Publication no. 219, available at <http://www.senat.cz>).

45. Thus, in the case of a decision on execution of a criminal judgment of a foreign state in the territory of the Czech Republic, in proceedings on the execution of decisions of foreign courts under § 384d of the Criminal Procedure Code, in the version in effect through 31 October 2004, we can not conclude that intervention by the public authorities is constitutionally disproportionate only from comparing the length of the sentence and the sentencing standards for an analogous crime under the Czech Criminal Code.

46. In addition, we can point out, over and above the foregoing, that the arguments of the petitioner, who considers the key question to be what the priority is in a case of conflict between two different ideas of the need for a sentence to have an effect on the convicted person, i.e. the idea of the Czech legislature in the European social-cultural environment, and the Thai legislature, anchored in different values, is also weakened when face to face with the cruel reality of the world-wide phenomenon of serious crime connected with the manufacture and trade in drugs, which has not had a significant decline in any of the affected regions (see United Nations Publication: 2005 World Drug Report, Volume 1: Analysis. Volume 2: Statistics. UN Office on Drugs and Crime, ISBN 92-1-148203-8, Printed in Slovakia, June 2005. or United Nations Publication: Report of the International Narcotics Control Board for 2005. International Narcotics Control Board, E/INCB/2005/1, ISBN 92-1-148209-7, ISSN 0257-3717, Printed in Austria, January 2006.) In recent times we can see in European countries as well the trend to increase punishment for the illegal drug trade (see European Monitoring Centre for Drugs and Drug Addiction: Annual Report 2005: The State of the Drug Problem in Europe. Office for Official Publications of the European Communities, ISBN 92-9168-227-6, Luxembourg, 2005, p. 18). To what extent this trend will manifest itself in the Czech legal order is a topic for academic deliberation *de lege ferenda*.

#### VI.g

##### Legitimate Aim of the Execution of Thai Criminal Judgments in the Czech Republic

47. It is evident to the Constitutional Court, on the basis of generally known information from publicly available sources (daily reportage, reports from international organizations), that the Thai Kingdom, thanks to its location and geographic conditions, i.e. in the “Golden Triangle,” has struggled for a long time with a high level of crime related to the manufacture and trade of drugs. At the same time, it is known that the petitioner is certainly not the only or first foreigner convicted in the Thai Kingdom in connection with the illegal drug trade. Drug smugglers are undoubtedly motivated by financial gain, as the smuggled drug increases considerably in value with each international border crossed, and that interest evidently outweighs the fear of possible strict punishment or the awareness of the destructive effect of drugs on the mental and physical health and family or social position of drug users at the end of the distribution chain.

48. In various states the aims of the legislature in the area of criminal law, including sentences, are always derived from extra-legal considerations based on political, social and moral principles, although the execution of criminal justice itself is controlled purely by legal principles. Therefore, the length of the sentence in and of itself can not be disproportionate universally, but only in view of the particular circumstances of the imposition of the sentence, the legal, social, and cultural context. The sentencing standards for particular conduct set by the legislature provide an acceptable (possible) sentence; the judicial authority then, in particular circumstances, imposes the appropriate sentence. In these bounds, in various legal environments, the regulatory, protective, preventive, and individually repressive functions appear in various proportions (cf. e.g. Kalvodová, Věra: *Postavení trestu odnětí svobody v systému trestněprávních sankcí*. [The Position of Prison Sentences in the System of Criminal Law Penalties.] Masarykova univerzita v

Brně [Masaryk University, Brno], 2002, p. 85.). While the additional function of revenge is not particularly evident in Czech criminal law theory, Thai doctrine considers it to be one of the starting points for serious crimes (see Suparp, Utid: The Philosophy of Criminology when Sentencing in Thai Courts: A Case Study of Intentional, Negligent and Provoked Criminals. In Online Thailand Law Journal, Issue 2 - Spring, 2005. [Http://www.thailawforum.com](http://www.thailawforum.com)).

49. The Thai Act on Dangerous Narcotic Substances from the year 2522 in the Brahman calendar (1979 A.D.) indicates that a person who produced, imports or exports narcotics will receive a life prison sentence. If the crime is committed for purposes of distribution, it will be punished by the death sentence. These provisions undoubtedly seem very strict in the European context, and in part they allow the death sentence, which is in sharp conflict with Protocol no. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning repeal of the death penalty under all circumstances. The petitioner was originally given a prison sentence of 50 years; after taking into account the royal pardons, it is 29 years, 9 months and 5 days. This is undoubtedly a long-term sentence.

50. It is also evident from the petitioner's statement before the District Court for Prague 6 that the conditions for serving the sentence in Thai prisons were completely inadequate, with inadequate hygienic and social facilities. The material conditions for serving a sentence in Thai prisons, as described by the petitioner, completely fail to meet the standards guaranteed in Europe by international law documents and Czech domestic law. The dismal conditions for serving a jail sentences are also documented in reports from international organizations (approximately the same time of the petitioner's sentence in Thailand is described in the report Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, published by the Commission on Human Rights as file no. E/CN.4/2002/76/Add1 on 14 March 2002) and a number of publicly available reports in the print and electronic media, reflecting the individual experiences of other foreign nationals serving prison sentences in the territory of the Thai Kingdom. Moreover, the petitioner's statement before the District Court for Prague 6 states that when serving his sentenced he was placed in a cell together with perpetrators of serious violent crimes, which exposed him to the danger of physical attacks. This practice too, of placing perpetrators of drugs offenses in cells together with the perpetrators of other crimes in Thai prisons is subject to criticism on a number of grounds (see the cited Report from the Commission on Human Rights, file no. E/CN.4/2002/76/Add1).

51. The Constitutional Court sees the institution of execution of a criminal judgment of a foreign state, in relation to the citizen of the country where the judgment is to be executed, as having a different purpose than that pursued by a Czech court when deciding on guilt and sentencing, on the basis of all phases of criminal proceedings under the Criminal Procedure Code. The central principle for a court's decision on the execution of a criminal judgment of a foreign state is a change in the conditions for serving the sentence, which can not result in an overall worsening of the convicted person's position. This institution of execution of the criminal judgment of a foreign state is primarily an expression of society's

effort to mitigate the negative effects connected with serving a sentence abroad, sometimes in an environment that is culturally and socially different from European conditions. The level of social and economic development in a particular country generally also has an effect on the quality of conditions in prison facilities, which are also reflected in the overall effects on the convicted person of serving a sentence. Serving a sentence in non-standard or extreme conditions undoubtedly reduces the effectiveness of the primary functions of a sentence, as they are generally understood by criminal law scholarship. It is a legitimate aim of the legislature to protect its own citizens from these negative effects, going beyond the framework of the effects that belong to a particular type of punishment based on its own nature. The purpose of steps by the state that permit the execution of a foreign criminal judgment on its own territory is thus primarily a humanitarian influence on the convicted person, whose aim is to remove the excess of negative influences, at his own request, but not the reduction of a sentence, especially when preserving the length of a sentence is an express condition of the transferring state (Art. 6 par. 2 of the Treaty).

52. Serving a prison sentence in an environment that is familiar to the convicted person, including, for example, an environment where he can communicate in his native language, undoubtedly performs its function better, because there is not such a great loss of social and family ties, which, for example, makes the convicted persons' integration into society after release less problematic. Thus, serving a sentence in one's native country offers more chances for effective fulfillment of the function of punishment. Apart from that, it is evident that execution of a foreign criminal judgment with a prison sentence in one's home country also eases the situation for the convicted person's relatives, who can thus more easily maintain the necessary contact with him; easing the work load of consular offices in the transferring state is also a positive accompanying effect.

53. In his constitutional complaint, the petitioner claims that serving a prison sentence in the Czech Republic of 42 years, 10 months and 13 days (however, after taking into account the royal pardons it is 29 years, 9 months and 5 days), is in and of itself a cruel and inhuman punishment. However, in view of the relevant case law of the European Court of Human Rights, the Constitutional Court is of the opinion that the point of the right not to be tortured or subjected to cruel, inhuman or degrading treatment is protection of human dignity and an individual's physical and mental integrity. A cruel and inhuman punishment is one that in its essence, purpose, or intensity causes intolerable physical pain or serious psychological suffering. However, the Constitutional Court does not believe that serving a long prison sentence, in light of the petitioner's arguments, in and of itself causes such suffering as would be the result of cruel and inhuman treatment. In view of the legitimate purpose of the legal framework permitting serving sentences from Thai court judgments of a greater length than that permitted by the Czech Criminal Code, which was primarily to mitigate the negative effect of the conditions in Thai prisons on Czech citizens convicted in Thailand, and regarding the petitioner's own will, which he expressed when he initiated his transfer to serve the criminal judgment in the territory of the Czech Republic, the contested decisions of the general courts do not appear to be disproportionate to the petitioner's interests protected by constitutional rights.

## VI.h

### Consideration of the Conditions for Serving the Sentence in Czech Prisons

54. Although the petitioner does not object in more detail in the constitutional complaint, the Constitutional Court also weighed whether serving a long prison sentence could be considered cruel and inhuman in view of the general conditions in Czech prisons, as guaranteed by Act no. 169/1999 Coll., on Serving Prison Sentences and Amending Certain Related Acts, as amended by later regulations. That states, among other things (§ 2), that a sentence can be served only in a manner that respects the personal dignity of the convicted person and limits the damaging effects of being deprived of liberty; however, it may not endanger the need to protect society. Convicted persons serving sentences must be treated in a dignified manner so as to preserve their health, and if the length of the prison sentence permits, to support such positions and skills as will help the convicted persons return to society and enable them, after their release, to live an independent life in accordance with the law. The Czech legal framework for serving prison sentences is generally judged positively, and international organizations do not raise such objections against Czech prison practices as would in any way affect the petitioner's situation (see Conclusions and Recommendations of the Committee against Torture: Czech Republic. 03/06/2004. CAT/C/CR/32/2.). Even the consideration covering the standards in Czech prisons does not lead the Constitutional Court to conclude that with a long prison sentence there might be substantial grounds to believe that such a sentence would in and of itself lead to disproportionate physical or mental suffering, or cruel or degrading treatment.

## VI.ch

### The Reality of Thai Royal Pardons

55. Moreover, as regards the total length of the prison sentence that the petitioner is serving, the Constitutional Court could not overlook the fact that, in accordance with Art. 5 a Art. 6 par. 4 of the Treaty, the Thai authorities can reduce, lighten, or end the petitioner's sentence, and the Czech authorities must respect and implement that decision. In the Thai Kingdom, according to traditional doctrine, the king is considered to be the source of power in the state. Court judgments are announced in the name of the king. In that domestic legal order, royal pardons are widely issued on the basis of a petition, or, for example, on the occasion of important holidays and anniversaries in the royal family) (Individual Royal Pardon, or Collective Royal Pardon). It is evident from the documents in the file of the District Court of Prague 6 file no. 3 T 127/2003 that the petitioner's sentence was reduced to 42 years, 10 months and 13 days, by a Thai court decision of 12 July 1996, on the basis of a royal pardon. In the period after the constitutional complaint was filed, the Provincial Court of Nonthaburi decided, on 6 October 2004, in file no. BKh.Ph. 2988/2547, that the petitioner's total sentence was reduced by a royal pardon on the occasion of the birthday of the Thai queen Sirikit, by one sixths, to 35 years, 8 months and 18 days. On the occasion of the 60th anniversary of the ascension to the throne of the Thai king, Bhumibol Adulyadej (Rama IX), the petitioner received another royal pardon, shortening his sentence by

5 years, 11 months and 13 days, to a total of 29 years, 9 months and 5 days.

56. In the Thai justice system a royal pardon is not an institution that exists in the legal system only formally, or is used only in exceptional cases, but it is applied in order to achieve a number of various aims, which include, apart from correcting judicial error in individual cases, guarantees of the equal rights of all convicted persons, the effort to maintain stain unity, providing new chances to convicted persons, emphasizing events of national importance, and maintaining international relationships (Kalyanasuta, K. - Suriyawong, A.: *The Criminal Justice System and Community-based Treatment of Offenders in Thailand*. Published in: *Annual Report for 2002 and Resource Material Series No. 61*, Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Tokyo, Japan, September 2003, p. 281. Available at <http://www.unafei.or.jp>). The real, although in an individual case uncertain, effect of the institution of a Thai royal pardon seems to be confirmed by statistics: royal pardons granted in 1977-1999 each applied to tens of thousands of convicted persons, who were released or had their sentences reduced (*ibid.*, *gale* on p. 282). *Obiter dictum* it is possible, taking into account the fact that the petitioner was originally given a prison sentence of fifty years, reduced three times by royal pardons, to note that it is thus impossible to speak of the total length of the petitioner's sentence with absolute certainty.

## VII.

### Decision of the Constitutional Court

57. The Constitutional Court reviewed the contested decisions of the general courts in terms of constitutionality, and concluded that they did not step out of the bounds of the constitutional order. The source of the petitioner's arguments is the length of the sentence, or disproportionateness of the sentence imposed on him by the courts of the Thai Kingdom. He criticizes the general courts for accepting, in their decisions (recognition and execution of the judgment of a foreign state) a sentence whose scope is beyond that of sentences imposed for a similar offense in the Czech Republic. He considers the recognition and execution of such a sentence to be unconstitutional, cruel and inhuman treatment. The Constitutional Court emphasizes that in the adjudicated matter it is not entitled, with reference to the international treaty, to interfere in the jurisdiction of the Thai courts. It can not be overlooked that the petitioner, although now in the territory of the Czech Republic, is still, as regards guilty an sentencing, in the exclusive judicial jurisdiction of the Thai authorities under Art. 5 of the Treaty.

58. Thus, the Czech authorities can not decide on objections aimed essentially against the Thai conviction decisions, because the Czech Republic would then be in conflict not only with the principle *pacta sunt servanda*, but also with the principle of good faith, which are the foundation stone of international treaty law, and their importance is strengthened by the fact that they have been incorporated in the preamble of the UN Charter. The principle of good faith is a fundamental rule of interpretation in the analysis of the texts of international obligations. They must be interpreted in good faith, taking into account the entire context of the treaty, and in light of the aim and purpose for which it was concluded. The aim and purpose of the treaty concluded between the Thai Kingdom and the Czech Republic

was to bring the petitioner, at his request, to his home environment, closer to his family and friends, and enable him to serve the remainder of his sentence at home, in his native land. Therefore, in that light, the petitioner's request, that the Constitutional Court, due to formal error, which is far from reaching a constitutional level, annul the decisions of the Czech general courts and release the petitioner, will not stand. If the Constitutional Court granted the petitioner's request, it would violate not only Art. 1 par. 1 and par. 2 of the Constitution of the Czech Republic, but also its trustworthiness in international relations.

59. The Constitutional Court is convinced that these conclusions will stand, not only in the context of other provisions contained in the constitutional order of the CR, in particular the Charter, but also in the context of other international obligations, in particular of the Convention for the Protection of Human Rights and Fundamental Freedoms, by which it is bound.

60. In view of the foregoing the Constitutional Court did not incline toward the petitioner's opinion that the decisions by the general courts in the execution proceedings violated his right to a fair trial or his right not to be subject to cruel, inhuman or degrading punishment. After thoroughly considering the purpose of the applied legal framework, permitting a sentence to be served in the Czech Republic whose scope exceeds that of sentences for similar offences, and after comparing the specific conditions for serving a sentences in the Thai Kingdom and in the Czech Republic, the Constitutional Court saw no grounds to annul the contested decisions.

61. Therefore, the Constitutional Court denied the constitutional complaint in its entirety under § 82 par. 1 of the Act on the Constitutional Court.

**Instruction: Decisions of the Constitutional Court can not be appealed.**

Brno, 21 February 2007