

# 2003/04/15 - I. ÚS 752/02: DANGER OF TORTURE

## HEADNOTES

Under the case law of the ECHR concerning Article 3 of the Convention, and under Art. 3 of the Convention Against Torture, the Constitutional Court reviewed whether there are substantial grounds to believe that the complainant, if expelled, was in danger of torture (the “substantial grounds test”). Here the Constitutional Court emphasizes that it is not up to it to state factual violation of the ban on torture, and inhuman and degrading treatment or punishment in Moldovan prisons, but on the basis of the evidence presented the Constitutional Court finds that there are substantial grounds to believe that there is a danger of violation of that ban in the event of extradition.

The priority of the obligations from agreements on the protection of human rights, in the event of conflict between obligations under international agreements, arises primarily from the content of these agreements, in connection with Art. 1 para. 1 of the Constitution, under which the Czech Republic is a state governed by the rule of law. The respect and protection of fundamental rights are defining elements of the substantively understood state governed by the rule of law; therefore, in a case where a contractual obligation protecting a fundamental right and a contractual obligation which tends to endanger that same right exist side by side, the first obligation must prevail. The Constitutional Court holds the opinion expressed in the judgment, the legal conclusion of which the Minister of Justice disagrees with, that no amendment of the Constitution can be interpreted to the effect that it would result in restricting an already attained level of procedural protection of fundamental rights and freedoms (Pl. ÚS 36/01, published under no. 403/2002 Coll.). The scope of the concept of constitutional order therefore can not be interpreted only with regard to Art. 112 para. 1 of the Constitution, but in view of Art. 1 para. 1 and 2 of the Constitution, it is necessary to include in it ratified and promulgated international agreements on human rights and fundamental freedoms.

Although after amendment of the Constitution (constitutional Act no. 395/2001 Coll.) agreements on the protection of human rights no longer form an independent category of legal norms with priority in application under the previous wording of Art. 10, nonetheless they are a special group of norms, and at the same time represent a reference point of view, both for the abstract review of norms under Art. 87 para. 1 of the Constitution, and for proceedings on constitutional complaints.

CZECH REPUBLIC  
CONSTITUTIONAL COURT  
JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court decided on this day in the matter of a constitutional complaint from the complainant V. M., presently in the Custodial Prison O., against a decision of the Regional Court in Ostrava of 4 December 2000, file no. 3 Nt 366/2000, a decision of the High Court in Olomouc of 28 February 2001, file no. 2 To 10/2001, and a decision of the Minister of Justice of the CR of 15 October 2002, ref. no. 594/2001-MO-M, as follows:

The decision of the Regional Court in Ostrava of 4 December 2000, file no. 3 Nt 366/2000, the decision of the High Court in Olomouc of 28 February 2001, file no. 2 To 10/2001, and the decision of the Minister of Justice of the CR of 15 October 2002, ref. no. 594/2001-MO-M are annulled due to inconsistency with Art. 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms, Art. 3 of the Convention for the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 7 of the International Covenant on Civil and Political Rights and Art. 7 para. 2 of the Charter of Fundamental Rights and Freedoms.

REASONING

I.

On 30 December 2002 the Constitutional Court of the CR received the complainant's constitutional complaint, in which he sought annulment of the abovementioned decisions on ground of interference with rights protected by Art. 3 and Art. 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms (notification no. 209/1992 Coll., the "Convention").

The Constitutional Court determined from the constitutional complaint and contested decisions that the complainant is a citizen of the Republic of Moldavia and that this state requested his extradition for criminal prosecution on suspicion of committing the crime of theft of property in an unusually wide scope under Art. 123 of the Criminal Code of the Republic of Moldova. The contested decision of the Regional Court in Ostrava decided that extraditing the complainant for criminal prosecution to the Republic of Moldova is permissible ( § 380 para. 1 of the Criminal Procedure Code). The contested decision of the High Court in Olomouc denied the complainant's complaint against the decision of the Regional Court (§ 380 para. 2 of the Criminal Procedure Code). The decision of the Minister

of Justice permitted extradition of the complainant to the Republic of Moldova for criminal prosecution (§ 382 para. 1 of the Criminal Procedure Code).

The complainant contested these decision with a constitutional complaint, because in his opinion Art. 3 of the Convention can be interpreted to protect a foreigner from extradition to an applying state if the foreigner would be exposed the risk of torture or inhuman or degrading treatment or punishment in that state. If extradited, the complainant will allegedly be exposed to treatment which is forbidden by Article 3. In this regard, the complainant referred to Amnesty International reports from 1997 to 2001 and cited sections which indicate that in Moldova there is systematic arbitrary detention of suspects, bad treatment by the police, and that there are cruel, inhuman and degrading conditions in the jails.

The complainant also relies on Art. 8 of the Convention, which guarantees respect for family life. He states that he has a wife and son in the Czech Republic, both Czech citizens, and applies to have his family life respected by his not being extradited to the requesting state.

In the constitutional complaint the complainant further disputed the effectiveness of legal assistance provided in proceedings on the permissibility on extradition; he stated that extradition materials are not adequate in terms of the European Convention on Extradition, that he did not commit the acts which are ascribed to him, and that he fled the country on the basis of personal experience of torture and cruel and inhuman treatment while he was being held unlawfully and after a warning that he would be liquidated, for being a politically inconvenient person, and also out of revenge. He sees the political reasons in the fact that, as a member of the Christian-democratic front, he supported joining Romania, and refused to boycott economic and legal reforms; the reasons for revenge arise from the fact that he pressed for the punishment of the murderers of another member of the same party, criticized the inactivity of the authorities in the press, and accused them of corruption. For these reasons the complainant petitioned for the annulment of all contested decisions concerning his extradition.

At the same time, the complainant submitted a petition to defer the executability of the extradition decision, which he justified on the grounds that in his case the effectiveness of protection depends on evaluating the substance of the matter before he is forced to leave the country.

## II.

The Constitutional Court first decided on the petition to defer executability of the extradition decision, which it granted by decision of 10 January 2003, ref. no. I. ÚS 752/02-10, because it found that the conditions were met for issuing such a decision, as foreseen in § 79 para. 2 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the “Act on the Constitutional Court”), and thus deferring executability is not inconsistent with an important public interest, and that execution of the decision would mean incomparably greater detriment for the complainant than can arise for other persons if executability is deferred.

### III.

For purposes of evaluating the constitutional complaint, the Constitutional Court requested the court file kept at the Regional Court in Ostrava under file no. 3 Nt 366/2000 in the matter of proceedings on extradition. It determined from the file that in the decision of the Regional Court in Ostrava which decided that extraditing the complainant for criminal prosecution to the Republic of Moldova is permissible under § 380 para. 1 of the Criminal Procedure Code, the court stated the acts for prosecution of which the complainant was to be extradited, and stated other findings from which it concluded that all conditions for extraditing the complainant set by the European Convention on Extradition (notification no. 549/1992 Coll.), had been met.

The complainant was not a citizen of the Czech Republic, did not have refugee status and had not been granted asylum, was not to be extradited to an area of armed conflict, there were no serious reasons preventing his extradition (e.g. humanitarian or health), extradition was requested for acts punishable under the law of both states, criminal prosecution was not barred by the statute of limitations or impermissible due to another obstacle, and no other circumstances preventing extradition were found. The court also stated that the submitted file materials did not indicate any of the circumstances which the complainant raised in his testimony, i.e. that the criminal prosecution was manufactured and had a political background. Likewise, the acts for which he is to be criminally prosecuted are not of a political, but a property-related and violent nature. Therefore, it concluded that all conditions for extradition had been met.

In the contested decision of the High Court in Olomouc which denied the complainant's complaint against the decision of the Regional Court, the appeals court stated that, in view of the changes in international conditions, it was necessary to apply not only the agreement between the CSSR and USSR on legal assistance and legal relationships in matters of civil, family and criminal law (decree No. 95/1983 Coll.), the to which the Czech Republic and the Moldovan Republic are successor states, but secondarily also the European Convention on Extradition, although the Moldovan Republic is not a party to that convention (sic! the Moldovan Republic is a party with effect as of 31 December 1997). The court further concluded that the complainant is being criminally prosecuted for a serious crime, whereas his objections on the alleged political background of his prosecution can not be supported by any credible facts. The court stated that "on the basis of available information, the democratic process is taking place in the Republic of Moldova," "the available information does not indicate that there is presently in Moldova mass violation of fundamental human rights which would be the subject of systematic criticism from the international community," and also took into account that the complainant's statements "indicate a progressive increase of the repressive procedures he cites on the part of state bodies of the requesting state" (the complainant progressively claimed additional repression, including torture). The court then again evaluated the conditions for extradition (§ 379 para. 1 of the Criminal Procedure Code and Art. 2 para. 1 of the European Convention on Extradition) and determined that they had been met. The court did not find the complainant's family situation to be a reasons which would prevent his extradition, and refused to subsume it under humanitarian or other serious reasons

preventing extradition. Thus, in the opinion of the appeals court no legal obstacles exist preventing extradition of the complainant to Moldovan justice authorities.

The decision of the Minister of Justice which permitted extradition of the complainant does not contain any reasoning.

The Constitutional Court called on the parties to the proceedings to submit position statements on the constitutional complaint. The Regional Court in Ostrava, in its statement (of 25 March 2003, ref. no. Spr. 4538/2003), referred to the previous arguments by the general courts, and proposed denying the constitutional complaint. The High Court in Olomouc, in its statement (of 27 March 2003, ref. no. Sú 9/2003), referred to its original decision, stated that it had tried, on the basis of available information, to comprehensively address the questions of the permissibility of extraditing the complainant, and proposed denying the constitutional complaint.

The Minister of Justice, in response to the Constitutional Court's request, on 3 April 2003 (ref. no. M-610/2003) expressed the opinion that the constitutional complaint should be denied insofar as it contests the Minister's decision, for one thing because of the Constitutional Court's inadequate jurisdiction to evaluate interference with rights guaranteed by international agreements, and for another because the Minister's decision making did not violate any of the complainant's rights guaranteed by constitutional laws. Insofar as the constitutional complaint contests the decisions of the general courts, the Minister of Justice considers the complainant's petition to be late.

Concerning the Constitutional Court's insufficient jurisdiction to evaluate interference with rights guaranteed by international agreements, the Minister of Justice believes that international agreements on fundamental rights and freedoms do not have the force of a constitutional act (by argument a contrario Art. 87 para. 2 of the Constitution, a contrario Art. 88 para. 2 of the Constitution and interpretation of Art. 89 para. 3 of the Constitution) and are not part of the constitutional order (a contrario Art. 112 para. 1 of the Constitution). The Minister of Justice argues with the opinion of the Constitutional Court expressed in its judgment of 25 June 2002, file no. Pl. ÚS 36/01 (published under no. 403/2002 Coll.), where, in part VII, the Constitutional Court interpreted Art. 9 para. 2 of the Constitution and concluded that the scope of the concept of constitutional order can not be interpreted only with regard to Art. 112 para. 1 of the Constitution, but also in view of Art. 1 para. 2 of the Constitution, and it can also include ratified and promulgated international agreements on human rights and fundamental freedoms. According to the Minister of Justice, Art. 9 para. 2 of the Constitution does not permit a "creative" interpretation of the Constitution and expanding the enumerations provided in the Constitution. In contrast, according to the Minister of Justice, this finding could be considered inconsistent with Art. 9 para. 2 of the Constitution.

In his statement, the Minister of Justice further states that the level of protection of fundamental rights and freedoms achieved is not a substantive requirement of a democratic state governed by the rule of law, as only its most important attributes can be such (Art. 23 of the Charter, Art. 2 para. 1, Art. 2 para. 3 and 4, Art. 5 and Art. 6 of the Constitution). Moreover, amendments implemented by constitutional Act no. 395/2001 Coll. do not necessarily mean reducing the existing standard of the level of procedural protection. A legal framework which provides that international agreements have priority

in application over statutes, under Art. 10 of the Constitution, is adequate, because if the court did not apply such an agreement, the injured party could seek protection of its right to a fair, lawful trial.

Concerning the complainant's substantive objections, the Minister of Justice stated that in deciding to permit extradition he relied on the evaluation of these questions by the general courts and the decisions of bodies of the Ministry of the Interior in asylum proceedings. Concerning the protection of human rights in Moldova in general, he relied, in particular, on a report from the United States Department of State, according to which, although certain problems have occurred in some areas, nonetheless the Moldovan government generally respects human rights. According to the Minister, excesses occur even in democratic states, but the important thing is the effort to implement measures so that human rights will not be violated. He also expressed his doubts concerning the complainant's claim that the cause of his persecution in Moldova is his membership in the Christian Democratic party, as this party is, according to information obtained, a parliamentary party. He also believes that his decision is not the complainant's final recourse for protection of rights under § 72 para. 2 of the Act on the Constitutional Court, and therefore the complainant's petition to annul the general court's decisions should be denied for being late (§ 43 para. 1 let. b) of the Act on the Constitutional Court). The final recourse in relation to decisions by general courts is a complaint (under § 141 et seq. of the Criminal Procedure Code), on which the High Court already decided on 28 February 2001.

The Constitutional Court also requested a statement concerning the state of human rights in the Republic of Moldova to entities which monitor the condition of human rights, primarily the Office of the UN High Commissioner for Refugees in Prague and the Czech Helsinki Committee.

The Office of the UN High Commissioner for Refugees in Prague (the "Office") sent the Constitutional Court a statement of 13 March 2003, in which it is of the opinion that human rights are violated in Moldovan prisons, specifically the right to life and the ban on torture and other cruel, inhuman, and degrading treatment. The Office reached this conclusion after studying a statement from the UN High Commissioner for Refugees in Chisinau and Moldovan human rights organizations (Lawyers for Human Rights, the Helsinki Committee for Human Rights, and the League for Protection of Human Rights), reports from the Committee Against Torture and reports from the United States Department of State, which it attached to the statement ("Report on the Visit to the Transnistrian Region of the Republic of Moldova Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment, 27-30 November 2000"; "Alternative Report to the Initial Report and the First Regular Report of the Republic of Moldova on the Stage of Implementation of the International Covenant on Civil and Political Rights" of January 2002; "U. S. Department of State, Country Reports on Human Rights Practices, Moldova" of 4 March 2002; "Raportul, Moldovan Helsinki Committee" of January 2003).

The Office states, with reference to the report from the Moldovan Helsinki Committee (MHC), that under current conditions the right to life, the ban on inhuman treatment and the right to privacy of any of approximately 11,000 prisoners is de facto being violated. Tuberculosis and the HIV virus are spreading uncontrollably in the prisons due to



overcrowding. Detained persons are held in overcrowded cells where ventilation practically does not exist. Health inspections, X-rays, and medical assistance, including medications, are completely lacking. Every tenth prisoner is in an active phase of tuberculosis (1150 in 2001; 9.8 %), 178 prisoners have HIV/AIDS. The number of deaths is climbing (50 annually, 3 % of prisoners). The highest number of complaints filed during monitoring visits in holding facilities concerns the presence of persons infected with tuberculosis among other detainees. The probability of infection with tuberculosis is forty times higher than it is outside prison facilities. The MHC cites individual cases of people coming down with tuberculosis. Detained persons are questioned without an attorney presence, beatings, electric shock and shackles are used. Here to the MHC cites individual cases. Funds available per prisoner are EUR 0.18 per day, two and a half times less than the Moldovan laws require, 40 % of a prisoner's minimum needs. Prisoners receive no food, fish, dairy products, fruit, vegetables, etc., i.e. no food except bread. In February 2001 at the police station in Tiganska St. in Chisinau, with a capacity for 60 detainees, there were 238 detained persons; there is no access to sunlight, the artificial light is very weak, the temperature is high in view of the number of persons in a small unventilated space, the detainees are not given mattresses or blankets and the prisoners have no access to showers.

The Office, with reference to the report from the United States Department of State, also states that judges are influenced in their decision making and corruption exists. The report from the United States Department of State reports on the situation in Moldovan prisons similarly to the MHC report.

The "Report on the Visit to the Transnitrian Region of the Republic of Moldova Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment, 27-30 November 2000," sent by the Office, summarizes that in many cases "the severity of the illtreatment alleged could be considered as amounting to torture." Another report from the same committee on a visit in the Republic of Moldova on 10-22 June 2001 similarly states that in a great number of cases the ill treatment is so severe that it can be considered to be torture.

The Czech Helsinki Committee responded to the Constitutional Court's requested by a statement of 24 March 2003, in which it referred to the report of the Moldovan Helsinki Committee for Human Rights, which it attached (Human Rights in the OSCE Region, Report 2002, International Helsinki Federation for Human Rights), and which repeats the abovementioned facts.

#### IV.

The Constitutional Court's task in this matter is to evaluate the contested decisions from the point of view of violation of fundamental rights and freedoms guaranteed by norms of the constitutional order of the CR. In this regard, the Constitutional Court reviewed, first of all, the violation claimed by the complainant of Art. 3 of the Convention, because extradition would allegedly expose the complainant to treatment which is forbidden by Art. 3, i.e. torture, or inhuman or degrading treatment or punishment.

In addition to the obligations arising from the Convention (i.e. of the Convention on the Protection of Human Rights and Fundamental Freedoms) the Constitutional Court also considered the obligations arising from the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (promulgated under no. 143/1988 Coll., the "Convention Against Torture"). Its Art. 3 para. 1 provides that no state party shall expel, return, or extradite a person to another state if there are serious reasons to believe that he would be in danger of torture there. For purposes of determining whether such reasons exist, it is necessary to take into account all related circumstances, in justified cases including the existence of permanent gross, obvious or mass violation of human rights in the particular state (cf. Art. 3 para. 2). The ban on torture is also enshrined in Art. 7 para. 2 of the Charter of Fundamental Rights and Freedoms and Art. 7 of the International Covenant on Civil and Political Rights.

The European Court for Human Rights (the "ECHR") has in the past several times considered the question whether it is in accordance with Art. 3 of the Convention for a state party to the Convention to extradite or expel a complainant to a state where the complainant claims that he will be subjected to torture or inhuman or degrading treatment.

In the case *Soering vs. the United Kingdom*, the complainant, who was to be extradited for criminal prosecution to the USA, where he was in danger of a death sentence, claimed that the circumstances of that punishment are inhuman treatment or punishment (decision of 7 July 1989, no. 161, 11 E.H.R.R. 439). He considered important the routine postponement of carrying out a death sentence for six to eight years after it is imposed. The ECHR decided that the extraditing state has, under of the Convention, a certain responsibility for possible subsequent ill treatment of the extradited individual, and stated that "it would hardly be compatible with the underlying values of the Convention ... were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds to believe that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances ... would plainly be contrary to the spirit and intendment of the article." The ECHR also explained why it diverged from its settled practice and in this case decided on the potential violation of the Convention: "It is not normally for [the ECHR] to pronounce on the existence or otherwise of potential violations of the Convention. However, where an applicant claims that a decision to extradite him would, if implemented, be contrary to Article 3 by reason of its foreseeable consequences in the requesting country, a departure from this principle is necessary, in view of the serious and irreparable nature of the alleged suffering risked, in order to ensure the effectiveness of the safeguard provided by that Article."

Other cases decided by the ECHR, which can be distinguished from the complainant's case and from the *Soering* case, illustrate the extension of interpretation of Article 3 in the case law of the ECHR. In other cases it decided whether violation of Art. 3 can take place in connection with expulsion, where the source of the danger to the complainant is not the public power of the receiving state, but other circumstances. In the case *D. v. United Kingdom*, the complainant, originally from the island of St. Kitts, who had been repeatedly convicted in Great Britain for possession of cocaine, after his prison sentence ended asked not to be expelled to St. Kitts, and objected that he had been diagnosed with AIDS and



that he was dependent on health care and medications available in Great Britain (verdict of 2 May 1997, 24 EHHR 423). The ECHR emphasized that foreigners affected by expulsion fundamentally have no claim to remain in the territory of the state party to the Convention; nonetheless, under the very exceptional circumstances of this case, and in view of fundamental humanitarian concerns, it stated that carrying out the decision to expel the complainant would be a violation of Art. 3 of the Convention.

Similarly, in the case Ahmed vs. Austria the ECHR decided that expulsion to Somalia would be violation of Art. 3 (verdict of 17 May 1996, 24 ECHR 278). The complainant faced a serious risk of torture or inhuman or degrading treatment, caused by the factions in the on-going civil war. This risk in and of itself was sufficient for the decision that extradition would be a violation of the Convention.

Under the case law of the ECHR concerning Article 3 of the Convention, and under Art. 3 of the Convention Against Torture, the Constitutional Court reviewed whether there are substantial grounds to believe that the complainant, if expelled, was in danger of torture (the “substantial grounds test”).

The decision of the Regional Court in Ostrava indicates that the court did not consider the question of substantial grounds, and merely stated that the complainant should not be extradited to an area of armed conflict, and that there are no humanitarian, health, or other serious grounds preventing extradition. The High Court in Olomouc, in the reasoning of its decision, stated that on the basis of available information, the democratic process is taking place in the Republic of Moldova and “the available information does not indicate that there is presently in Moldova mass violation of fundamental human rights which would be the subject of systematic criticism from the international community.” The decision of the Minister of Justice does not contain reasoning, but according to the position statement on the constitutional complaint the Minister relied, in particular, on the report from the United States Department of State, according to which “although certain problems have occurred in some areas” (quoted from the statement of the Minister of Justice), nonetheless the Moldovan government generally respects human rights. According to the Minister, excesses occur even in democratic states, but the important thing is the effort to implement measures so that human rights will not be violated.

The Constitutional Court examined whether substantial grounds exist to believe that, if extradited, the complainant was in danger of torture, reached an opinion completely different from the opinion of the general courts, and found that the constitutional complaint is justified. The statement from the Office of the UN High Commissioner for Refugees and the attached monitoring reports are several sources which confirm, independently of each other, that these substantial grounds exist. Conditions in the Moldovan prisons, where the complainant, if extradited, would be placed while being prosecuted and, if found guilty by a court, while serving his sentence, are realistically threatened interference in the complainant’s right to the ban on torture, and inhuman and degrading treatment or punishment. In this regard the general courts interfered with the complainant’s rights protected by Art. 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms, Art. 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 7 of the International Covenant on Civil and Political Rights and Art. 7 para. 2 of the Charter of Fundamental Rights and Freedoms. Here the Constitutional Court emphasizes that it is not up to it to

state factual violation of the ban on torture, and inhuman and degrading treatment or punishment in Moldovan prisons, but on the basis of the evidence presented the Constitutional Court finds that there are substantial grounds to believe that there is a danger of violation of that ban in the event of extradition. The Constitutional Court is aware of the gravity of the consequences of its judgment; nonetheless, its task in this case is protection of fundamental rights, and it does not have the jurisdiction to inform the appropriate bodies of the Council of Europe of the inadequate observance of the standard of protection of human rights in some Council of Europe member states.

In this situation, it was not necessary to consider the interference with other rights, raised by the complainant.

In the complainant's case, two international obligations of the Czech Republic stand in conflict. On one side is the obligation of the Czech Republic, as a part to the European Convention on Extradition (no. 549/1992 Coll. ), in which it agreed to extradite all persons who are being prosecuted for a crime by the appropriate bodies of the applying party (Art. 1). On the other side, the Czech Republic is also bound by the cited international agreements on human rights and fundamental freedoms. The Constitutional Court here states that in such a case it is appropriate to give priority to obligations from the agreements on the protection of human rights.

The priority of the obligations from agreements on the protection of human rights, in the event of conflict between obligations under international agreements, arises primarily from the content of these agreements, in connection with Art. 1 para. 1 of the Constitution, under which the Czech Republic is a state governed by the rule of law. The respect and protection of fundamental rights are defining elements of the substantively understood state governed by the rule of law; therefore, in a case where a contractual obligation protecting a fundamental right and a contractual obligation which tends to endanger that same right exist side by side, the first obligation must prevail.

Although after amendment of the Constitution (constitutional Act no. 395/2001 Coll.) agreements on the protection of human rights no longer form an independent category of legal norms with priority in application under the previous wording of Art. 10, nonetheless they are a special group of norms, and at the same time represent a reference point of view, both for the abstract review of norms under Art. 87 para. 1 of the Constitution, and for proceedings on constitutional complaints. In this respect the Constitutional Court does not agree take the opinion of the Minister of Justice, indicated by his statement on the constitutional complaint. The Constitutional Court holds the opinion expressed in the judgment, the legal conclusion of which the Minister of Justice disagrees with, that no amendment of the Constitution can be interpreted to the effect that it would result in restricting an already attained level of procedural protection of fundamental rights and freedoms (Pl. ÚS 36/01, published under no. 403/2002 Coll.). The scope of the concept of constitutional order therefore can not be interpreted only with regard to Art. 112 para. 1 of the Constitution, but in view of Art. 1 para. 1 and 2 of the Constitution, it is necessary to include in it ratified and promulgated international agreements on human rights and fundamental freedoms, for the reasons given above.

Even if it were possible to grant that the Minister of Justice is correct that the Constitutional Court does not have jurisdiction to decide on violation of rights guaranteed by an international agreement, the Constitutional Court would review potential violation of the ban on torture and inhuman and degrading treatment guaranteed by Art. 7 para. 2 of the Charter of Fundamental Rights and Freedoms (the “Charter”) and would reach the identical conclusion. The Constitutional Court presumes that the Minister of Justice considers the Charter to be a referential norm in proceedings on constitutional complaints, although the Constitutional Court is bound, *stricto sensu*, by constitutional acts, which the Charter is not, because under no. 2/1993 it was only promulgated by resolution of the leadership of the Czech National Council as a component of the constitutional order of the CR, and constitutional Act no. 23/1991 Coll., which introduced the Charter as a constitutional act, was deconstitutionalized by Art. 112 para. 3 of the Constitution.

The Constitutional Court also does not share the opinion of the Minister of Justice concerning the lateness of the petition to annul the decisions of the general courts. We must grant that the Minister of Justice is correct that a mere statement that extradition is permissible does not yet mean that a person will be extradited. However, unlike the Minister of Justice, the Constitutional Court sees, precisely in this fact, grounds why the Minister of Justice’s decision to permit extradition must be understood as the last recourse which the law provides to protect the complainant’s right. On the contrary, in view of the fact that one of the attributes of a constitutional complaint is its subsidiarity (under § 75 para. 1 of the Act on the Constitutional Court), in the event that the complainant turned to the Constitutional Court at the moment when the court’s decision on the permissibility of extradition went into legal effect (§ 380 para. 3 of the Criminal Procedure Code), and before permission to extradite was issued by the ministry, his complaint would have to be denied as impermissible because it did not exhaust all procedural means for protection of rights. The constitutional judiciary is based, above all, on review of matters in which unconstitutionality can not be corrected in any other manner, and in the event that the Minister of Justice did not permit extradition, there would simply be no interference in rights guaranteed by the norms of the constitutional order through the decisions of the general courts.

In this situation the Constitutional Court considered in what extent it is appropriate to annul the decisions contested by the constitutional complaint. It evaluated on one side the application of the principle of minimizing interference with decisions of the Minister of Justice and the general courts, and on the other side the complainant’s fundamental right to personal freedom, as the complainant is placed in extradition custody until a decision on extradition is issued. Thorough minimizing of the Constitutional Court’s interference would prolong the period during which the complainant’s freedom is restricted. Therefore, in this case the Constitutional Court was convinced that protection of the complainant’s personal freedom must prevail over the principle of minimizing interference with the contested decisions, and decided as is stated in the verdict.

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

Brno, 15 April 2003