III. ÚS 665/11 of September 10, 2013
"Extradition of an Alien"

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE REPUBLIC

HEADNOTES

The Constitutional Court points out that the substance of the non-refoulement principle is a prohibition of the state to expel or allow to return ('refouler') a refugee to another state where his life or personal freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Article 33 para. 1 of the Convention relating to the Status of Refugees) or in which a threat that his right to life (Article 2 of the Convention) would be violated or that he would be exposed to torture or subject to inhuman or degrading treatment or punishment (Article 3 of the Convention, Article 3 of the Convention against Torture). Should this obligation flowing from international treaties collide with the obligation to extradite, the conclusion expressed earlier that "the respect and protection of fundamental rights are defining elements of the substantively understood state governed by the rule of law" shall apply while "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 legislature defined administrative proceedings on granting of international protection in accordance with the Act on Asylum maintained before the Ministry of the Interior and the court proceedings on the permissibility of extradition pursuant to § 397 of the Code of Criminal Procedure as two independent and mutually unconditioned proceedings each of which pursues a different aim. The court deciding about the permissibility of extradition has an obligation to find out whether the person who is subject to extradition applied for international protection and with what kind of outcome these proceedings were concluded. Should the court find out that the application was granted pursuant to § 393 letter b) of the Code of Criminal Procedure it would have to adjudicate that extradition is impermissible. Otherwise, that is also in the case that the above application was dismissed the court would not be bound by the factual and legal conclusions of the relevant administrative proceedings and the court would have to entirely independently [§ 393 letter k) and l) of the Code of Criminal Procedure] assess the full extent of the question whether the extradition did not give rise to breach of the principle of non-refoulement in virtue of Article 33 of the Convention relating to the Status of Refugees in association with Articles 2, 3, and 6 of the Convention or alternatively whether there are no other grounds for the permissibility of extradition. However, a situation might occur that the administrative body will adjudicate on application for granting international protection after the court holds that the extradition is permissible.

VERDICT

The Constitutional Court held in the Chamber consisting of the Chairman Vladimír Kůrka and judges Jan Musil and Pavel Rychetský, the Judge Rapporteur, outside an oral hearing and devoid of presence of the parties to the proceedings in the matter of constitutional complaint of A. A., represented by Mgr. et Mgr. Marek Čechovský, Ph.D., an attorney at law with seat at Praha 1, Václavské nám. 21, against the decision of the Ministry of Justice of February 24, 2011 file reference 2727/2008-MOT-T/119, resolution of the High Court in Prague of September 22, 2010

file reference 8 To 85/2010 and resolution of the Municipal Court in Prague of February 9, 2010 file reference Nt 475/2008 with the Minister of Justice, the High Court in Prague, and the Municipal Court in Prague as parties to the proceedings as follows:

I. The decision of the Ministry of Justice of February 24, 2011 file reference 2727/2008-MOT-T/119 amounted to violation of fundamental right of the Complainant to judicial and other legal protection pursuant to Article 36 para. 1 and 2 of the Charter of Fundamental Rights and Freedoms (the Charter) in connection with the right to seek asylum simultaneously with the right to seek via judicial proceedings that the relevant body of public authority issues a decision on such application for asylum as provided by Article 43 of the Charter and pursuant to the principle of non-refoulement in virtue of Article 33 paragraph 1 of the Convention relating to the Status of Refugees published jointly with the Protocol relating to the Status of Refugees of January 31, 1967 under no. 208/1993 Coll., and Articles 2 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

II. Decision of the Minster of Justice of February 24, 2011 file reference 2727/2008-MOT-T/119 is set aside.

III. The Constitutional complaint is dismissed in the remaining parts.

REASONING

I.
Definition of the matter

1. In the Constitutional complaint delivered to the Constitutional Court on March 4, 2011, the petition of which was extended by an addendum submission of April 7, 2011, the Complainant was seeking to have the above mentioned decision of the Minster of Justice set aside by which his extradition to criminal prosecution proceedings to the Russian Federation was allowed and (after the above addendum) to have the resolution of the ordinary courts stating that his extradition was permissible set aside. The contested decision in the view of the Complainant breached his constitutionally guaranteed rights pursuant to Article 33 para. 1 of the Convention relating to the Status of Refugees published jointly with the Protocol relating to the Status of Refugees of January 31, 1967 under no. 208/1993 Coll., and Articles 2 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter only as “the Convention”) in connection with Article 1 para. 2 of the Constitution of the Czech Republic (hereafter only as "the Constitution"). The extradition was permitted prior to the conclusion of the proceedings on the Complainant’s application for international protection and moreover on the grounds of the decisions of the ordinary courts on permissibility of extradition which was found to be based on erroneous facts and findings. The constitutional complaint was associated with an application for suspension of enforceability of the decision of the Minister of Justice.

II.
Summary of the extradition proceedings and associated facts

2. The Complainant is a citizen of the Russian Federation of Chechen nationality. On December 11, 2008 he was apprehended in Prague on the grounds of an international arrest warrant of March 19, 2003 issued by a court of the Russian Federation specifically by the Federal Court of Savelovskiy District in Moscow on grounds of suspicion of having committed the criminal offence of murder. The Complainant was to have committed the concerned criminal offence, briefly said, by appointing another person for remuneration to organize the murder which occurred on April 4, 2002. In a letter of December 29, 2008 the General Prosecutor’s Office of the Russian Federation

sought extradition of the Complainant for criminal prosecution proceedings. Should he be convicted he would face a lifetime imprisonment sentence.

3. After the termination of preliminary investigation on the side of the Public Prosecutor's Office the matter of permissibility of extradition of a Complainant became a matter of judicial proceedings that - pursuant to § 397 and § 399 of Act No. 141/1961 Coll., on Criminal Judicial Proceedings (Code of Criminal Procedure) precedes the decision of the Minister of Justice on permissibility of extradition. The Municipal Court in Prague (hereafter also as "the first instance court") held in the matter first by a resolution of March 10, 2009 file reference Nt 475/2008-68 stating that the extradition of the Complainant was impermissible. Subsequently the High Court in Prague (hereafter also as "review court") affirmed the above decision when by its resolution of March 19, 2009 file reference 8 To 27/2009-92 it dismissed the complaint of the public prosecutor against the above mentioned decision. Both courts emphasized that the Complainant as follower of the independent Chechen Republic of Ichkeria who in the course of the first Chechnya war (1994-1996) participated in the resistance movement against the Russian Army in the position of a commander was thus under threat of prosecution in the Russian federation and his position being aggravated in the criminal proceedings in Russia. The opinions of the above courts were considered as insufficiently reasoned by the Supreme Court thus the Supreme Court quashed both decisions on the grounds of the remedy of the Minister of Justice pursuant to § 397 para. 3 of the Code of Criminal Proceedings. In its resolution dated July 29, 2009 file reference 11 Tcu 49/2009-112 the Court objected that the court of first instance based its conclusions and findings solely on the statements of the defence on possible prosecutions without having in any manner verified the submitted material or obtained further information related to those statements. The contents of the court file failed to indicate that the Complainant would have been persecuted in any manner at the end of the war - in the years 1996 to 2002 - when he was residing at the territory of the Russian Federation. In the year 2002 he was even issued a new passport. Neither the court of first instance nor the review court were considered to have sufficiently dealt with the fact that the Complainant was in hiding at the territory of the Czech Republic from 2003 under false identity without having applied for international protection. The Complainant only filed the concerned application for international protection after he was taken into custody. For those reasons the Supreme Court found the mentioned decisions to be contrary to § 2 para. 5 and 6 of the Criminal Procedure Code.

4. With regards to the conclusions and findings of the Supreme Court the matter was repeatedly tested and reviewed by the Municipal Court in Prague - the court tested additional evidence and newly failed to find a reason for which the extradition of the petition could be considered impermissible. In its resolution of February 9, 2010 file reference Nt 475/2008-166 the Court does not question the participation of the Complainant in the armed resistance movement in the first Chechen war, nor does it question the tested evidence which includes a wide range of news establishing the general situation in the Russian Federation, however, those do not justify the conclusion that the above mentioned participation in the resistance movement should give rise to the originally anticipated consequences. The court also took regard to the fact that in the years 1997 and 1999 an amnesty was announced for all participants of the mentioned conflict and that the Complainant for several years after the end of the conflict resided in the city of Ufa which is several thousands of kilometers away from Chechnya while not being exposed to any persecution during that time. The Deputy of the General Prosecutor of the Russian Federation provided a written guarantee that the extradited Complainant once in the Russian Federation would be provided all opportunities for defence and that he would not be subject to torture, cruel or inhuman or humiliating treatment or punishment and that he would only be held liable for the criminal offence for which his extradition was sought and that application for his extradition did not follow the purpose of prosecution of the petition on political, racial, religious grounds or on the grounds of his political views.

5. By its resolution of March 2, 2010 file reference 8 To 21/2010-200 the High Court in Prague affirmed the legal findings and conclusions of the court of first instance related to the permissibility

of extradition. The contested resolution was quashed and a new decision in the matter was issued only in relation to the verdict covering the preliminary custody of the Complainant and this only for the purpose of specifying the legal foundation of the concerned verdict. Equally the subsequent dismissal of the concerned resolution by a resolution of the Supreme Court of August 30, 2010 file reference 11 Tcu 51/2010-252 did not question the conclusion on the permissibility of extradition as such. The reason behind the dismissal was solely the fact that the review court failed to remove the error of the court of first instance which failed to sufficiently deal with the reassurance provided by the requesting party and failed to include it in the dictum of its resolution. These conclusions were reflected by the High Court in Prague in its subsequent resolution of September 22, 2010 file reference 8 To 85/2010-264, pursuant to which the extradition of the Complainant is permissible while simultaneously accepting the reassurance of the General Prosecutor's Office of the Russian federation pursuant to Article 11 European Convention on Extradition, published under No. 549/1992 Coll., and § 393 letter h) of the Code of Criminal Procedure contained in the application for extradition of December 29, 2008 providing that the Complainant will not be sentenced to capital punishment (dictum 1). Simultaneously the Court again and in an identical manner decided on taking the Complainant into investigative custody (verdict II). The Complainant was served the resolution on October 5, 2010. It was on the grounds of this resolution that the Minister of Justice allowed by his decision of February 24, 2011 file reference 2727/2008-MOT-T/119 the extradition of the Complainant for criminal proceedings to the Russian Federation.

6. To define the matter it is necessary to state that the petition filed an application seeking international protection on January 28, 2009 which was dismissed by the decision of the Ministry of the Interior of February 19, 2009 file reference OAM-42/LE-05-05-2009 as manifestly unfounded pursuant to § 16 para. 2 of the Act no. 325/1999 Coll., on Asylum as amended. Pursuant to this provision an application seeking international protection is dismissed as manifestly unfounded if it is clear from the course action of the applicant that the application was submitted with the aim of avoiding the pending expulsion, extradition, or handing over for criminal proceedings to a foreign country, although it would have been possible to apply for international protection earlier and unless the applicant can establish the contrary. Based on the action filed by the Complainant the above decision was dismissed by the decision of the Municipal Court in Prague on December 1, 2009 file reference 4 Az 2/2009-57 while the court stated that the conditions for applications of the above provision were not satisfied. The cassation complaint of the Ministry of the Interior was dismissed by the decision of the Supreme Administrative Court of August 10, 2010 file reference 4 Azs 10/2010-99. The matter was thus referred back to the Ministry of Interior which by its decision of April 5, 2013 file reference OAM-42/LE-05-LE05-R2-2009 did not grant the Complainant international protection. The proceedings concerning the action of the Complainant against this decision submitted on May 13, 2013 is pending before the Municipal Court in Prague under file reference 1 Az 8/2013.

7. On May 10, 2010 The European Court on Human Rights was delivered an application by the Complainant seeking to have breach of Article 3 and 6 of the Charter declared on the grounds that in the case of his extradition to the Russian Federation that might occur on the basis of the resolution of the High Court in Prague (which was final at the material time) of March 2, 2010, file reference 8 To 21/2010-200 he would be subject to inhuman and degrading treatment and his right to a fair trial would not be respected in criminal proceedings. The application is registered under number 14021/10. After the Complainant received the contested decision of the Ministry of Justice on March 3, 2011 the European Court on Human Rights admitted his application for preliminary measures restricting his extradition until the time when his application is decided on.

III.
Arguments of the Complainant

8. The Complainant mainly states that his application for international protection was not submitted for the purpose of convenience but for the reasons of his well-founded fear of the threat of persecution, torture and other inhuman treatment as well as threat to his life. Under those

circumstances the permissibility of his extradition to the Russian Federation should have been decided only after the proceedings on this application for international protection were finally completed including any potential subsequent judicial review. In his opinion the request to have the question of his refugee status resolved prior to his extradition follows from the non-refoulement principle embedded in Article 33 para. 1 of the Convention Relating to Status of Refugees pursuant to which no contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion respectively also in Article 13 of the Convention on the grounds of which the European Court on Human Rights related the above prohibition also to the territories in which a refugee would be exposed to the threat of torture or inhuman and degrading treatment or punishment. With respect to the above the Complainant refers also to a similar legal opinion of the Supreme Administrative Court formulated in the above-mentioned decision file reference 4 Azs 10/2010-99.

9. In his constitutional complaint and mainly in the subsequent submission of April 7, 2011 the Complainant raised the objection against the assessment of permissibility of his extradition by ordinary courts. As one of the commanders of the combat units he demonstrably participated mainly in defence combat operations for which reason he was subsequently included on a so-called list of Chechen combatants who are from the commencement of the second Chechen war (from the year 1999) practically continuously sought and subsequently persecuted. With reference to this the Complainant points out that in the Russian Federation and namely in Chechnya, Ingushetia, and Dagestan mass and systematic gross breaches of human rights occur. The facts that the situation with respect to human rights application is disturbing as well as are the operations of democratic institutions in this area are supported by cases of disappearance of members of the government opposition and human rights activists that remain on a wide scale insufficiently investigated and unpunished. At the same time retaliatory measures are taken against families of persons suspected of membership in illegal armed fraction forces such as arson of their homes, kidnapping and threats against close relatives of such suspects. Equally the current atmosphere is the one of threats against the media and the civil society while the judicial bodies do not take any action against the crimes of the armed security forces.

10. It is the obligation of the state when deciding about extradition of the Complainant to take regard to the fact whether as a result of the realisation of such decision there is no threat of torture or inhuman and degrading treatment prohibited by Article 7 of the Charter of Fundamental Rights and Freedoms (hereafter only as "the Charter") or by Article 3 of the Convention and whether the criminal proceedings in the requesting state would entirely comply with the principles contained in Article 6 of the Convention. In the case of the Complainant the Supreme Court did indeed quash the original decision of the Courts on the permissibility of the extradition of the Complainant; this, however, was only done for the reason of not gathering all relevant evidence or alternatively due to the decision likely being a premature one. The decision of the Supreme Court did not indicate any binding instruction to the court of lower instances regarding the necessity to extradite the Complainant. Both courts were thus obliged to provide reasoning for the change in their original decisions by truly significant arguments and evidence - this was not the case - since that newly obtained documentary evidence was not in the position to change anything about the original findings and conclusions. The report of the Ambassador of the Czech Republic in the Russian Federation and the report of the Director of the Department of Human Rights and Transformation Policy of the Ministry of Foreign Affairs of the Czech Republic indicate that those institutions of state administration do not have any specific information about the extradited person and that they are merely interpreting the information obtained from the Russian liaison police officer who considers the course of action of the Russian official bodies to be entirely legitimate and lawful. Not a single one of the documents had any explanatory or evidential value in that concerned matter. Another report drafted by the Department of Asylum and Immigration Policy cannot be regarded as the document is unlawful. The Ministry of Interior failed to test the application of the Complainant for international protection and this in the end gave rise to the dismissal of the decision of the Ministry by the administrative courts. The risks associated with the extradition of the Complainant

and his placement in the Russian correctional facility are indicated for example by the report of Amnesty International the conclusions of which the courts practically failed to deal with. The court (as well as the above mentioned administrative body in the proceedings on international protection) also erred by failing to test other evidence proposed by the Complainant - mainly hearing several witnesses who are actively involved in a variety of Chechen organizations in Europe and are familiar with the situation in the country of origin of the Complainant as well as with his personal circumstances. A number of them were granted asylum in the member states of European Union or alternatively they were granted citizenship. By refusing to hear such persons the right of the Complainant to due defense was breached since he has no other option to prove the threat of persecution in the country of origin.

IV.
Proceedings before the Constitutional Court

11. Upon the petition of the Complainant the Constitutional Court by its resolution of March 18, 2011 file reference III. ÚS 665/11-23 pursuant to § 79 para. 2 of Act no. 182/1993 Coll., the Constitutional Court suspended the enforceability of the contested decision of the Ministry of Justice. The court further invited the then Minister of Justice to submit an opinion on the constitutional complaint. It subsequently invited the other parties to the proceedings to submit their opinions on the constitutional complaint. The court requested the extradition file reference 2727/2008-MOT-T maintained before the Ministry of Justice and the file maintained before the Municipal Court in Prague under file reference Nt 475/2008 for the purpose of assessing the constitutional complaint while the contents of the above files correspond to the above mentioned summary of the existing proceedings.

12. The Constitutional Court repeatedly turned to the Ministry of Interior with a request for information on the proceedings related to the Complainant's application for international protection and it requested the opinion of the Ministry of Foreign Affairs and opinion of The Public Defender of Rights who could with regards to their competencies be able to present arguments relevant for the decision on the merits of the matter.

IV./a
Opinion of the Ministry of Justice of April 29, 2011

13. The Minister of Justice JUDr. Jiří Pospíšil in his opinion of April 29, 2011 dealt with the individual objections of the Complainant raised in both of his submissions. He initially pointed out that Article 1 point F letter b) of the Convention relating to Status of Refugees clearly expresses the intent of its authors to exclude from the advantages provided by the Convention the advantages of a person in whom there are serious grounds to presume that they committed a serious non-political criminal offences outside their asylum country before they are allowed to settle in such country as refugees. The non-refoulement principle is after all excluded even in cases provided under Article 33, para. 2 of this Convention.

14. As far as the objection of failure to respect the judgment of the Supreme Administrative Court file reference 4 Azs 10/2010-99 which contains the legal opinion pursuant to which the decision on permissibility of extradition may not occur earlier then the proceedings on granting international protection have been concluded in a final manner including a potential judicial review while this is based on the Guidance Note on Extradition and International Refugee Protection by the United Nations High Commissioner for Refugees which, however, is not legally binding. This Guidance Note is contradicted by the case law of the Constitutional Court and Supreme Court [for instance Judgment of January 3, 2007 file reference III. ÚS 534/06 (N 1/44 SbNU 3) or the Resolution of the Supreme Court of June 26, 2001 file reference 11 Tcu 26/2001 (Rt 42/2002), of February 12, 2007 file reference 11 Tcu 7/2007 and of July 29, 2009 file reference 11 Tcu 43/2009] pursuant to which the issues of human rights and the compliance of extradition with the obligations following for the Czech Republic from international treaties must be assessed as early as in the extradition

proceedings and cannot be postponed until the conclusion of the proceedings on granting international protection. This is inter alia demonstrated also by Article 7 para. 2 of the Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards of Procedures in Member States for Granting and Withdrawing Refugee Status. The afore-mentioned judgment of the Supreme Administrative Court is a problematic one also for the reason that that permissibility of extradition is decided by the Minister of Justice within the extradition proceedings while this is in virtue of § 12 para. 10 of the Code of Criminal Procedure criminal proceedings in line with Criminal Procedure. The decisions of the Minister thus are not subject to review by administrative courts. The adjudication of courts and the Minister of Justice as a whole serves to ensure that the extradition of a certain person will not represent a breach of obligations following for the Czech Republic from international law. Such decisions thus in their summary satisfy the requirements following from Article 36 para. 2, Article 38 para. 2 and Article 43 of the Charter and Article 13 in connection with Article 3 of the Convention.

15.In another part of his opinion the Minister deals with that part of the presented arguments in which the Complainant denies the criminal conduct for which he is to be extradited and assigns the conduct exclusive political motives. In the opinion of the Minister the participation of the Complainant in the Russian - Chechen war is not in any manner questionable; however, the extradition is to occur for a general criminal offence of murder committed on the territory of Moscow the subject matter of which is not in any way associated to the above conflict. It follows from the Complainant's own statement that he resided in the territory of the Russian Federation for a period of 6 years after the cessation of conflict without being in any manner persecuted. He was able to leave the country with his own passport and under his real name which he did in 2002 when he left for Cyprus and he was able to return (a so-called "real risk" test). And yet he stayed on the territory of the Czech Republic under false identity without having applied for international protection. The Complainant failed to submit any information nor did he state specific circumstances to justify an objective likelihood of a threat to his person as a consequence of his extradition including the threat of torture or inhuman treatment. When assessing the real threat of breach of human rights and fundamental freedoms conferred by the Convention in relation to a specific person within criminal proceedings in the requesting state the specific conditions under which the extradition of the person is sought must be referred to and the question of permissibility or impermissibility of the extradition of the person must be supported exclusively by the political situation in the territory of the concerned person. The Russian Federation may not be generally considered as a state in which mass and systematic violation of human rights occurs that would entirely disable mutual extradition of criminal offenders. In the years 2008 and 2009 overall six persons were extradited from the Czech Republic to the Russian Federation while in none of those cases grounds were found for not permitting the extradition - not even from the point of view of the obligations of the Czech Republic in the area of protection of human rights. It must be added that the Resolution of the Parliamentary Assembly of the Council of Europe No. 1738 (2010) of June 22, 2010 on Legal Remedies for Human Rights Violations in the North Caucasus region does not invite the member states of the Council of Europe to refrain from extradition of persons of Chechen nationality or Chechen origin. It merely recommends assessing the applications for extradition of refugees from the North Caucasus region with utmost care. To conclude the Minister proposed that the Constitutional Court dismiss the petition of the Complainant as unfounded.

IV./b
The opinions of the Complainant dated June 6 2012, July 4, 2011 and July 18, 2011

16. The Complainant responded to the above arguments by his opinion of June 6, 2011 in which he described the interpretation of article 1 point F letter b) of the Convention relating to Status of Refugees as impermissible if in accordance to it even formal charges of politically unrelated felony criminal offence justify the presumption that the Complainant indeed actually committed such an offence. Should such an interpretation be accepted it would indeed be sufficient for the government bodies of any country in any person to press potential charges of felony offence and the asylum proceedings would have to be terminated with reference to the above provision. His criminal

proceedings is moreover, an artificially set up criminal case similar to those which repeatedly occur for people of Chechen origin on the side of the Russian federation.

17. The Complainant further opposes the opinion of the Ministry of Justice that the decision of the Supreme Administrative Court in the matter of the Complainant is based solely on a legally not binding guideline and that it contradicts the allegedly unified and consistent case law of the Supreme Court and the Constitutional Court (of the Czech Republic). In association to this the Complainant points out the Judgments of January 30, 2007 file reference IV. ÚS 553/06 (N 17/44 SbNU 217) and of November 10, 2010 file reference I. ÚS 2462/10 (N 221/59 SbNU 195), pursuant to which the decision to extradite an alien may give rise to a problem from the point of view of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, alternatively Article 7 para. 2 of the Charter should serious and verified grounds exist to presume that the person concerned is exposed to the real risk that he would be subject to torture or inhuman or degrading treatment or punishment. It is necessary to relate this opinion to the Complainant's extradition. In favour of the argumentation of the Supreme Administrative Court § 393 letter b) of the Criminal Procedure Code may be also pointed out pursuant to which pertinent granting of international protection represents one of the grounds of impermissibility of extradition as well as the Opinion of the Government's Legislative Council concerning the Bill amending the Act no. 326/1999 Coll., on the Residence of Aliens in the Territory of the Czech Republic and on amendment of certain Acts of May 20, 2010 file reference 262/10. By the above opinion the Government's Legislative Council opposed the intent of the Ministry of Justice to award an absolute preference of realization of extradition before the proceedings on granting international protection since this would subsequently mean restricting the rights of an alien to seek international protection and the proceedings in the matter of international protection would thus become illusory.

18. In the statement on the alleged absence of concrete evidence regarding the persecution in the country of origin the Complainant notes that he has no other option than to refer to reports of respected international government and non-government institutions on the situation in the country of origin and on similar cases and to more than 150 judgments of the European Court for Human Rights in which violations of the Convention have been found in the context of treating the Chechnya people alternatively an option to submit statements of specific persons familiar with the case of the Complainant and with the situation in the country of origin or to propose depositions of witnesses. The fact that the Complainant resided for several years on the territory of the Russian Federation after the second Chechnya war was over may not be relied on to assume that his application for international protection is one of convenience neither to assume his fear of persecution is ungrounded. His situation evidently changed right after the second Chechnya war ended by victory of the federal forces after the factual conquest of the capital city of Grozny. The Russian state bodies and mainly the security agencies then accessed key information leading to disclosure of identities of so-called Chechnya combatants and thus of course also concerning those from the first Chechnya war. It was only at this point of time when the actual persecution commenced of the Chechnya combatants at the level of commanders which showed inter alia in unlawful custody of the Complainant and in other circumstances which partially forced him to change his identity and caused significant problems in his life in the territory of the Russian Federation. The Complainant was forced to hastily leave this territory in causal link to the artificially construed charges and based on the fear of extradition he was not able to use his true identity when arriving in the Czech Republic. The fact that solely Chechnya people were charged with the offence for which he is to be extradited supports the assertion that in his case and presumably also in the case of joint offenders of this offence the guilty parties are artificially set up with the aim of emphasising and intensifying the general anti-Chechnya conventions in public opinion and to lawfully dispose of persons who actively participated in higher positions in the first Chechnya war. These facts amount to grounds for the Complainant’s fear of prosecution for reasons specified in § 12 of the Act on Asylum as well as fear of torture and other degrading and inhuman treatment in virtue of Article 3 of the Convention 3 amounting to grounds for the Complainant’s non extradition to the country of origin.

19. To conclude the Complainant points out the legal opinion contained in the Judgment file reference I. ÚS 2462/10 which in his opinion can clearly be applied to the circumstances of his case. Thereof the Constitutional Court affirmed that the violation of Article 7 para. 2 of the Charter, Article 3 of the Convention and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment published under no. 143/1988 Coll. (hereafter only as "Convention against Torture") may occur also in extradition proceedings should the ordinary courts within such proceedings fail to repeatedly address reports by international organizations which point to insufficient guarantees of fair trial in Georgia, the local political persecution therein and to the critical situation in the area of prison; that is in the end they afford preference to the generally proclaimed and by the requesting country promised guarantees of fair trial before the specific arguments of the Complainant and international non-government bodies.

20. The Complainant supplemented his already submitted documentary evidence by further statements or other written documents in his submissions of 4 and 18 July 2011 which were to support his statements that the concerned charges are artificially set up and that in the event of extradition he will be exposed to unlawful treatment on the side of Russian bodies and he will not be guaranteed his right to fair trial.

IV./c
Opinion of the Minister of Justice of June 25, 2011

21. In his further opinion responding to the last three submissions of the Complainant the Minister of Justice repeated that in the instant case the evidence contained in the file of the Municipal Court in Prague and of the Ministry of Justice was assessed and that in his opinion the evidence does not justify the conclusion that in the event of the Complainant the case had been artificially set up and that his extradition to the Russian Federation (outside the territories of the republics of North Caucasus) represents a threat of persecution. It is understandable that the Convention relating to the Status of Refugees does not deal with the impact of the pending extradition proceedings on the asylum proceedings since it was concluded at the time when extraditions were relatively less frequent, although not an unusual occurrence. For the procedural side of the relation of both of the concerned regulations and with respect to the establishment of common asylum system and common space of security and justice in European union he considers to be of key role the above quoted procedural directive and its Article 7 para. 2 which permit the extradition of an applicant for international protection at least under certain circumstances.

22. Regarding the argumentation referring to provision § 393 letter b) of the Code of Criminal Procedure he pointed out that this provision takes regard to the already final decision on granting international protection and not the proceedings on international protection as such. The above mentioned opinion of the Government's Legislative Council is misinterpreted by the Complainant since the purport of the draft by the Ministry of Justice was not to establish the "priority of the extradition proceedings" but to solely take into account the principles of assessment of preliminary questions both pursuant to § 9 of the Code of Criminal Procedure and pursuant to § 57 para. 2 of the Administrative Code that require that the decision issued at the earlier date be respected. Iin other words that the final decisions on granting international protection are respected in the extradition proceedings, which has already been the case and is secured namely by the provision § 393 letter b) of the Code of Criminal Procedure and that in the proceedings for granting international protection the decisions of courts on permissibility of extradition are respected, which is not such a common occurrence in practice. The Minister of Justice is convinced that failure to respect the decisions of an independent court issued within limits of its jurisdiction in extradition proceedings leads to distortion of the distribution of power within the state.

23. The Minister of Justice responded also to the individual objections of the Complainant, which were to contest the conclusions of the ordinary courts regarding the permissibility of his extradition. Inter alia the Minister emphasized that the subject matter of the extradition proceedings is not to test the question of guilt or innocence of the person whose extradition is in question. This

fact nevertheless does not prevent the person from submitting evidence on his/her innocence that can be relevant also for the conclusion on whether they will be extradited. The Minister did not in the instant case state that the Complainant had committed the murder or serious non-political criminal offence; however, serious grounds exist for which it can be assumed that that had been the case which is sufficient from the point of application of Article 1 point F letter b) of the Convention on the Status of Refugees. As far as the specific objections of the Complainant are concerned regarding his statement that the fact that the charges are artificially set up by the bodies of the Russian Federation can be proven by many of the 150 judgments of the European Court of Human Rights the Minister notes that in spite of those judgments even this Court in certain cases permitted the extradition of certain people of Chechnya origin to the Russian Federation even directly into the territory of Chechnya. The case law of the Court thus cannot be considered to represent sufficient justification for a flat rejection of extradition of such persons.

24. The concept of extradition proceedings in which the permissibility of extradition and within its framework also the compliance of the extradition with international legal obligations of the Czech Republic always undergoes an obligatory test by a court and ensures the protection of human rights and fundamental freedoms of people whose extradition is at stake in an even better manner than the proceedings for granting international protection. He adds that the proceedings on extradition into a foreign state represent a case of a so called necessary defence [§ 36 para. 4 letter d) of the Code of Criminal Procedure] and that the body of executive power decides in this proceedings only on the grounds of a positive decision of an independent court. On the contrary, in the proceedings for granting international protection the judicial review is only possible in an additional and not in an obligatory manner and in the first instance proceedings without obligatory legal representation. The Minister of Justice maintains that the constitutional complaint is to be dismissed.

IV./d
Additional opinions of parties to the proceedings and amicorum curiae

25. The High Court in Prague in its opinion of August 1, 2011 signed by the President of the relevant Chamber, JUDr. Jiří Lněnička, stated that it lacks jurisdiction to assess the decision of the Minister of Justice. It referred to the reasoning of its decision in the instance the Constitutional Court should consider the constitutional complaint to be directed also against the decision of courts on permissibility of extradition. The invitation for submission of its opinion was also received by the Municipal Court in Prague, which, however, failed to respond.

26. The Minister of Foreign Affairs Karel Schwarzenberg in his letter dated 13 June 2013 pointed to the numerous cases of violation of fundamental rights of persons in association with criminal proceedings in the Russian Federation in spite of the fact that such rights enjoy formal guarantees. Their long-term and substantial violation occurs also in the area of North Caucasus where this frequently happens mainly in cases related to the combat against terrorism and often also in relation to the elimination of any opposition. The alliance with Chechen ethnicity should not in the case of extradition into the Russian Federation and subsequent judicial trial in the Republic of Chechnya play any substantive role in itself; however, in cases of former and existing members of armed groups located in pre-trial detention or prison facilities of the Republic of Chechnya torture or cruel treatment cannot be ruled out. He did not address any other arguments of the Complainant in his opinion since he is not in the position to assess the adjudication or errors of courts or government institutions in this matter.

27. The Public Defender of Rights JUDr. Pavel Varvařovský in his opinion dated July 3, 2013 emphasized that Article 3 of the Convention, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 7 of the International Covenant on Civil and Political Rights published under No. 129/1976 Coll., and Article 33 of the Convention relating to the Status of Refugees give rise to an obligation imposed upon the Czech Republic to subject to an independent and thorough review every complaint of an alien who in a justifiable manner claims that there are serious grounds to assume that as a result of an involuntary

termination of their stay they will be subject to torture or other cruel, inhuman or degrading treatment or punishment in the territory of another state. In his opinion the question is whether the assessment of the permissibility of extradition on the side of the criminal courts and the subsequent decision of the Minister of Justice complies with the requirements of the "independent and thorough review" with regards to the purpose of such proceedings. He points out that the non-refoulement principle embedded in Article 33 of the Charter enjoys a special place mainly within the framework of the Convention relating to the Status of Refugees wherein it represents an essential principle of the protection of refugees. This provision is of non-derogatory nature since in virtue of Article 42 para. 1 of the above Convention the signatories may not apply any reservation against it and although it does not confer the right to asylum or an obligation of the states to grant asylum to a person who would be facing a threat of the above consequence, the states must adopt such measures that will not lead towards refoulement (for instance displacement to a third safe country or provision of temporary shelter). The application of the above principle necessarily requires investigation of the specific circumstances of every individual case. Potential extradition of an applicant for international protection prior to the completion of such proceedings would not only be contrary to the above obligations but also to Article 18 of the Charter of Fundamental Rights of the European Union, the content of which includes a real option to seek asylum under stipulated circumstances which cannot be undertaken in extradition proceedings pursuant to the Code of Criminal Procedure. The right to apply for asylum and simultaneously seek via a legal way to have the relevant public body decide on such application is guaranteed also by Article 43 of the Charter or by Article 36 of the Charter.

28. In the opinion of the Public Defender of Rights the distinct nature of both proceedings, each of which has a different subject matter, supports the notion that the decision on extradition of the Complainant cannot be issued prior to the conclusion of the proceedings on granting international protection and completion of the subsequent judicial review. While in the proceedings on extradition the Czech Republic and its bodies have a negative obligation that is to refrain from conduct leading to an involuntary termination of the stay of an alien in its territory, the Convention relating to the Status of Refugees as well as Article 18 of the Charter of Fundamental Rights of the European Union and Article 43 of the Charter give rise to a positive duty of the state to enable an alien to obtain a "protective" status represented pursuant to the existing legislation by international protection in virtue of the Act on Asylum be it in the form of asylum or supplementary protection. The proceedings on extradition itself cannot lead to granting such status, not even in the case of impermissibility of the extradition. The above mentioned distinction between the negative and the positive obligation of the state is an essential one even for the solution of the collision of the extradition proceedings and proceedings for granting international protection. Compliance with the principle of non-refoulement results in the obligation of the state to treat an alien as a refugee until it has been decided on his/her status and a duty to respect such an obligation. The personal extent of Article 33 of the Geneva Convention is thus not restricted only to recognized refugees but with respect to the declaratory nature of the recognition of the legal status of refugees also to all applicants for asylum.

29. The Ministry of the Interior informed the Constitutional Court on the actual course of the proceedings on the application of the Complainant for international protection, as summarized in this judgment.

IV./e
The additional submission of the Complainant of November 8, 2011, December 5, 2011 and June 16, 2012 and the opinion of July 11, 2013

30. By the submissions dated November 8, 2011, December 5, 2011 and June 16, 2012 the Complainant supplemented his constitutional complaint by other written documents which in his opinion should establish the reasonableness of his statement that the conditions for permissibility of extradition have not been satisfied in his case. In his opinion dated July 11, 2013 the Complainant

stated that the opinions of the Ministry of Foreign Affairs and of the Public Defender of Rights fully correlate with his argumentation contained in his constitutional complaint.

IV./f
Other

31. In virtue of § 44 Act No 182/1993 Coll., on the Constitutional Court as amended the Constitutional Court held in the matter without holding an oral hearing, since it found that the received written statements and the content of the requested files are sufficient for clarification of the matter.

32. The original judge rapporteur in the instant case was Judge Jiří Mucha whose position was terminated by expiration of his term of office on January 28, 2013. In compliance with the work schedule, Pavel Rychetský was determined as judge rapporteur.

V.
Assessment of admissibility and timeliness of the constitutional complaint.

33. It follows from the provision § 75 para. 1 of the Act on the Constitutional Court as amended that protection of fundamental rights and freedoms can be sought by a constitutional complaint only against decisions that are "final", that is decisions on the last procedural means the law provides for such protection. Mostly such decisions will be the ones by which the judicial or other proceedings are completed. Nevertheless, satisfaction of such conditions may be conceded also in cases of decisions that are not concerned with the merit of the matter should they have the capacity to immediately and perceptibly interfere with the fundamental rights of the Complainant and which represent an independent and enclosed part of the proceedings, even though the proceedings itself has not been concluded yet. [compare Judgment of January 12, 2005 file reference III. ÚS 441/04 (N 6/36 SbNU 53)].

34. The Constitutional Court is of the opinion that both the concerned decision of the Minister of Justice by which the extradition of the Complainant was permitted (§ 399 para. 1 of the Code of Criminal Procedure) as well as the contested decision of the High Court that adjudicated in the proceedings on permissibility of the Complainant's extradition against the resolution of the court of the first instance (§ 397 para. 1 of the Code of Criminal Procedure) are of a "final" nature in virtue of the concerned provision.

35. The decision of the Ministry of Justice concludes the proceedings on extradition to a foreign state within the framework of which the request of a foreign state for extradition of a person for the purpose of criminal prosecution or service of an imposed prison sentence or a protective measure results in deprivation of liberty. Should the extradition of such person be permitted by such decision then it is specifically the decision itself that represents the legal grounds for its realization and thus for the associated dramatic intervention into the circumstances of such person interfering not only with personal liberty but also with other fundamental rights and freedom of such person. It is thus clear that such a person must have within this proceedings an opportunity to address the concerned request of the foreign state, to submit statements and evidence on the existence of the facts that prevent his extradition as well as to exercise his procedural rights. Regarding the standing of such a person to act as a party to the proceedings, although the law does not expressly refer to this, as the extradition proceedings represent nothing other than criminal proceedings pursuant to the Code of Criminal Procedure, the standing cannot be questioned. In the end concerning this matter as a supportive argument the applicable wording of § 36 para. 4 letter d) of the Code of Criminal Procedure which stipulates the obligation to be in the course of the whole of such proceedings represented by a defense counsel can be referred to.

36. Since extradition to a foreign state always interferes with fundamental rights and freedoms the person concerned cannot be denied the opportunity to seek judicial protection in virtue of Article

36 para. 1 and 2 of the Charter. The legislature was aware of this requirement, however, it was reflected in the extradition proceedings in a specific although not inadmissible manner. In order to achieve realization of the extradition immediately or in a relatively short period of time after having been permitted by the Minister of Justice the legislature entrusted the assessment of the question whether any of the grounds of impermissibility of extradition stipulated in § 393 of the Code of Criminal Procedure exist to the court that adjudicate on the extradition upon the obligatory petition of the public prosecutor in separate proceedings even before the decision of the Minister of Justice. The person subject to extradition is thus able to exercise their procedural rights in proceedings before a regional court which pursuant to § 397 para. 1 of the Code of Criminal Procedure adjudicates on the matter as the first instance court. And as well as the public prosecutor the concerned person may exercise means of remedy against the resolution of such court, the remedy being a complaint filed with the High Court.

37. The fact that the decision on permissibility of extradition is conditioned by a court decision stating that extradition is permissible (§ 399 para. 1 of the Code of Criminal Procedure) represents in relation to the person subject to extradition the highest possible legal guarantee from the point of national law that the realization of such an extradition decision will not lead to violation of fundamental rights and freedoms of the concerned person. Should the court decide that any of the grounds of impermissibility of extradition pursuant to § 399 of the Code of Criminal Procedure exists the Ministry of Justice shall notify the requesting state that the extradition cannot be permitted (§ 399 para. 3 of the Code of Criminal Procedure) without the impermissibility of extradition being formally decided upon. It clearly follows from the mentioned provisions that in the extradition proceedings the Minister of Justice does not assess or substitute for the decision of the court on permissibility of extradition and that he only deals with the factual accuracy of such decision with respect to his opportunity to exercise his authority to submit the matter for review to the Supreme Court in virtue of § 397 para. 3 of the Code of Criminal Procedure which at the same time is the only way in which he can achieve dismissal of such decisions and modification of the legal opinions contained in those decisions. Otherwise his own decision-making is limited solely to the finding whether in the question of permissibility of extradition the court had issued a final decision and whether any fact stipulated by § 399 paras 2 and 4 of the Code of Criminal Procedure or alternatively any other fact (see below) which would in spite of the concerned decision represent a legal bar to permissibility of extradition. Although the Minister of Justice is entitled to disallow the extradition also in a case when a court adjudicated the permissibility of extradition this fact does not give rise to such decision of the Minister being considered a means of remedy against the decisions of courts. The point of such discretion is limited mainly to the consideration of political aspects of extradition which by nature of the matter cannot be subject to the adjudication of courts. Any interpretation which would place the Minister of Justice in the position of another instance in court proceedings would be with respect to his position as the body of executive power contrary to the constitutionality defined separation of powers.

38. For these reasons a person concerned with extradition may file a constitutional complaint both against the decision of the High Court issued in the proceedings on impermissibility of extradition and against the decision of the Minister of Justice on permitting the extradition. Both of these decisions are distinctly different by their purpose and subject matter of assessment thus from the point of proceedings before the Constitutional Court they both have the nature of a decision on final procedural means of remedy provided by the law to the concerned person for protection of his or her right (§ 72 para. 3 of the Act on the Constitutional Court). However, although the Constitutional Court considered the constitutional complaint of the Complainant admissible in its entire extent the court could not overlook that the above stated conclusions are to be reflected also in the assessment of the question of the timeliness of the complaint which must be assessed in the instance of each of these decisions individually from the time of service. It is obvious that this fact is not a bar to having the merits of the complaint tested in the part in which it is directed against the decision of the Minister of Justice dated February 24, 2011. An identical conclusion cannot be reached in relation to that remaining part of the complaint. As it follows from the relevant court file the contested decision of the court of second instance was served to the complainant on October 5,

2010 and thus the constitutional complaint against it as well as against the preceding decision of the court of first instance would have been deemed as filed late even in the case if the petition seeking to have those decisions quashed had been included in the first submission of the Complainant dated March 4, 2011 and not in his submission dated April 7, 2011.

39. III. chamber of the Constitutional Court was aware that the above-mentioned conclusions differ from the legal conclusions contained in the judgments dated April 15, 2003 file reference I. ÚS 752/02 (N 54/30 SbNU 65) in which the Constitutional Court on the contrary recognized the decision of the Minister of Justice as being of the nature of final procedural means of remedy for the protection of rights and against the decisions of courts on permissibility of extradition. For this reason and pursuant to § 23 of the Act on the Constitutional Court the Constitutional Court submitted the question of relation of the decision of the Minister of Justice on permitting the extradition pursuant to § 399 para. 1 of the Code of Criminal Procedure from the point of admissibility of such a complaint, period of limitation for submission of such a complaint and the extent of the review to the Plenum of the Constitutional Court which identifies with its legal opinion in its opinion dated August 13, 2013 file reference Pl. ÚS-st. 37/13 (262/2013 Sb.). This opinion overrides the legal opinion contained in the judgment file reference I. ÚS 752/02 and implicitly also in judgments dated December 20, 2006 file reference I. ÚS 733/05 (N 230/43 SbNU 605) and September 5, 2012 file reference II. ÚS 670/12, as well as in the mentioned judgment file reference I. ÚS 2462/10.

VI.
Subject matter assessment of the constitutional complaint

40. Since the constitutional complaint was in the part in which it was directed against the decision of the Minister of Justice on permitting the extradition of the Complainant submitted in a timely manner the Constitutional Court proceeded to assess the merits of the complaint. The court concluded that in this part the complaint was grounded.

41. As mentioned above the adjudication on permissibility of extradition in virtue of § 397 and § 399 of the Code of Criminal Procedure this decision is duly entrusted to the courts which deal with this question in an obligatory manner in separate proceedings. The Minister of Justice may decide on impermissibility of extradition only once the court proceedings have been completed and solely under the presumption that the courts did not find any grounds for impermissibility of extradition pursuant to § 393 of the Code of Criminal Procedure. Otherwise he would not decide on the request for extradition to a foreign state and the extradition proceedings would be concluded by a mere notification that the extradition cannot be permitted.

42. The fact that the Minister of Justice is in the question of permissibility of extradition bound by the legal opinion of the court and that he is not entitled to reassess or substitute this opinion is reflected also in the extent of the review of the decision of the Minister on permitting the extradition in proceedings on constitutional complaints. The Constitutional Court specifically limits its findings to the fact whether the admissibility of extradition of the Complainant was adjudicated by a court prior to the extradition being permitted by the Minister without the Court in any manner dealing with its content as the Complainant had the opportunity to file a constitutional complaint even against this decision. Should it transpire that the Minister of Justice permitted the extradition contrary to the adjudication of court which expressed impermissibility of such extradition or before the court proceedings were concluded in a final manner then such course of action of the Minister would have to be assessed as a flagrant violation of law (or act of arbitrariness) by which the Complainant would be denied judicial protection of his or her fundamental rights and freedoms contrary to Article 36 para. 1 and 2 of the Charter. At the same time also violation of the principle of non-refoulement could occur which would with regards to this principle being of the nature of an obligation following from international law represent a breach of the obligation of the Czech Republic to comply with these obligations in virtue of Article 1 para. 2 of the Constitution which governs also the decision-making of the Minister of Justice. It should be noted that the above-

mentioned consequences could occur also should the extradition be allowed in spite of the court decision stating the permissibility of the extradition having being suspended by resolution of the Constitutional Court pursuant to § 79 para. 2 of the Act on the Constitutional Court or should for this purpose the European Court of Human Rights adopt an interim measure pursuant to Article 39 of its Rules of Court.

43. The Constitutional Court points out that the substance of the non-refoulement principle is a prohibition of the state to expel or allow to return ('refouler') a refugee to another state where his life or personal freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Article 33 para. 1 of the Convention relating to the Status of Refugees) or in which a threat that his right to life (Article 2 of the Convention) would be violated or that he would be exposed to torture or subject to inhuman or degrading treatment or punishment (Article 3 of the Convention, Article 3 of the Convention against Torture) - compare for instance judgments of the European Court of Humans Rights of April 12, 2005 in Shamayev and others versus Georgia no. 36378/02, § 335, of November 8, 2005 in Bader and Kanbor against Sweden no. 13284/04, § 41 and 42 and of February 28, 2008 in Saadi against Italy no. 37201/06, § 125. Should this obligation flowing from international treaties collide with the obligation to extradite, the conclusion expressed earlier that "the respect and protection of fundamental rights are defining elements of the substantively understood state governed by the rule of law" shall apply while "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." (compare judgment file reference I. ÚS 752/02).

44. The grounds for impermissibility of extradition pursuant to § 393 of the Code of Criminal Procedure are equally relevant not only at the moment of adjudication of the court on permissibility of extradition but at any time after such moment until the point of realisation of such decision. For this reason the Minister of Justice must in his decision-making always consider if the concerned court decision is not based on facts which ceased to apply due to the passage of time and thus if they can continue to be considered as relevant grounds for potential permission of the extradition. Should this be the case the Minister of Justice would be obliged to disallow the extradition while not being authorised to decide himself whether a potential extradition is permissible even under those altered conditions. One of the facts that would clearly cast doubts on the permissibility of extradition and that would occur by a decision of public power would be an additional granting of international protection in virtue of § 393 letter b) of the Code of Criminal Procedure. In the opinion of the Constitutional Court which will analysed below in detail this provision, however, it does not make it possible to allow extradition even in the case that the proceedings on that first application of the Complainant for granting of international protection was not concluded in a final manner including potential judicial review.

45. The legislature defined administrative proceedings on granting of international protection in accordance with the Act on Asylum maintained before the Ministry of the Interior and the court proceedings on the permissibility of extradition pursuant to § 397 of the Code of Criminal Procedure as two independent and mutually unconditioned proceedings each of which pursues a different aim. The court deciding about the permissibility of extradition has an obligation to find out whether the person who is subject to extradition applied for international protection and with what kind of outcome these proceedings were concluded. Should the court find out that the application was granted pursuant to § 393 letter b) of the Code of Criminal Procedure it would have to pronounce that extradition is impermissible. Otherwise, that is also in the case that the above application was dismissed the court would not be bound by the factual and legal conclusions of the relevant administrative proceedings and the court would have to entirely independently [§ 393 letter k) and l) of the Code of Criminal Procedure] assess the full extent of the question whether the extradition did not give rise to breach of the principle of non-refoulement in virtue of Article 33 of the Convention relating to the Status of Refugees in association with Articles 2, 3, and 6 of the Convention or alternatively whether there are no other grounds for the permissibility of extradition. However, a situation might occur that the administrative body will adjudicate on application for

granting international protection after the court holds that the extradition is permissible. The existence of such a situation must be acknowledged even for the reason that the court has no obligation to await the conclusion of the proceedings on granting international protection and it may decide on admissibility of extradition even in the course of such proceedings on granting international protection [compare the resolution of the Supreme Court file reference 11 Tcu 26/2001]. The above situation may also be caused by the fact that the application for international protection is submitted in the final phase of such court proceedings or even after the court proceedings are terminated. In every case the administrative body will in further proceedings not be bound by the factual and legal conclusions of the court and it will be able to assess the question whether the concerned application is founded entirely independently. It is not excluded that the administrative body will decide to grant international protection for the reasons which the court found insufficient for concluding that the extradition is impermissible.

46. Based on the described relations of both proceedings it is clear that the person concerned with extradition has at his or her disposal two proceedings within which such person can seek protection from interference with his or her fundamental rights and freedoms occurring as a result of the breach of the principle of non-refoulement. The obligation of the Minister of Justice not to permit the extradition in the case that international protection was granted after the court by its decision held that the extradition was permissible must be concluded directly from § 393 letter b) of the Code of Criminal Proceedings as it follows directly therefrom that the relevance of the outcome of such proceedings on granting international protection for the decision on permitting the extradition as well as the fact that the assessment of the facts that could potentially justify granting of asylum or supplementary protection to the applicant from the side of the administrative body cannot be substituted by the adjudication of the court in the proceedings on permissibility of extradition pursuant to § 397 of the Code of Criminal Procedure.

47. Unlike the court which was able to decide on permissibility of extradition before the completion of the proceedings on granting international protection the Minister of Justice may not permit the extradition until the moment such proceeding is concluded in final manner, including potential subsequent judicial review (the Supreme Administrative Court arrived at a similar conclusion in the matter of the Complainant although for different reasons, however this court does have the jurisdiction to review the decisions of the Minister of Justice regarding the extradition proceedings; compare the decision of the Supreme Administrative Court reference no. 4 Azs 10/2010-99). In a situation when the law presumes that the proceedings on granting international protection as well as the court proceedings on that permissibility of extradition may be held simultaneously while the outcome of each of these proceedings may - independently of the order in which the proceedings are completed - be relevant for the decision of the Minister of Justice about whether or not the extradition shall be permitted, the person subject to extradition may not be denied the opportunity to have his or her application for international protection assessed. Should the Minister of Justice allow extradition before completion of extradition proceedings he would de facto make the continuation of these proceedings dependent on a fact which is from the point of view of the concerned person an arbitrary one - that is whether the realization of the extradition itself will occur in the course of these proceedings or after completion of these proceedings. The Ministry of the Interior itself would thus in a number of cases be able by prolonging the proceedings to achieve a situation when as a result of the extradition of the applicant there would be no other option than to terminate the proceedings. Such course of action would naturally lead to unequal status of the applicants for international protection without any justifiable grounds for such inequality. It would equally be possible to attribute signs of arbitrariness to such proceedings as a result of which not only the violation of the right of the concerned person subject to a fair trial would occur pursuant to Article 36 paragraphs 1 and 2 of the Charter but also of Article 43 of the Charter by which the Czech Republic undertook an obligation to accept and to deal with the applications for granting of asylum on the grounds of persecution for exercise of political rights and freedoms. The violation of such rights would, however, not occur in the event that the concerned person would in the course of extradition proceedings apply repeatedly for international protection for identical or similar reasons - that is without the decisive circumstances having

changed - after the proceedings of such persons concerning their first application were completed. Extradition of the concerned person under such circumstances could not lead to interference with the above-mentioned rights.

48. The essence of the outlined interpretation of § 393 letter b) of the Code of Criminal Procedure is the existence of the statutory guarantee of the principle of non-refoulement which with respect to the existence of two proceedings represents a higher although not a necessary standard of protection of the related fundamental rights and freedoms. And it is exactly in this principle when generally, however not in an unlimited manner, the preference before international legal obligation towards extradition can be inferred. The boundaries of the application of this principle follow from constitutional order and from the applicable international treaties and are expressed mainly within Article 1 letter F of the Convention relating to the Status of Refugees by which person with respect to whom there are serious reasons for considering that they committed a crime against peace, a war crime, or a crime against humanity or a serious non-political crime outside the country of refuge prior to his admission to that country as a refuge is excluded from the protection.

49. A proceedings on application for granting international protection generally loses its importance when the applicant is extradited to a foreign state before the completion of the proceedings while the same conclusion applies also in association with subsequent judicial review. In relation to these of course the risk of disproportionate prolongation of the length of the extradition proceedings connected with the conditional decision of the Minister of Justice on whether or not the extradition shall be allowed by the completion of the above proceedings cannot be underestimated. This risk, however, in itself cannot represent a reason for which the person concerned with extradition should be denied the statutory opportunity to apply international protection and thus to seek in the relevant proceedings to have the existence of grounds that would potentially justify granting of international protection and thus impermissibility of the extradition assessed. It is namely an obligation of the Ministry of Justice in cases of extradition of the applicant to proceed in the most efficient manner and without delay and in this respect to apply means conferred by the Act on Asylum for instance § 10a letter e) or § 16 para. 2 of the Act on Asylum. A similar incentive can be imposed in procedures of a regional court in proceedings on action against the relevant decision of the Ministry of the Interior (§ 32 Code of Administrative Justice) and the Supreme Administrative Court in any potential proceedings on cassation complaint against the decision of a regional court.

50. The Constitutional Court concludes by adding that it principally does not have jurisdiction to review grounds for which the Minister of Justice in a situation when a court adjudicated the extradition as permissible and no grounds existed casting doubt on the factual findings based on which the above conclusion led towards the adjudication of the court that the extradition is permissible was made did not exercise his authority to not allow the extradition. The concerned entitlement of the Minister is an expression of the political dimension of his decision-making about extradition to a foreign state which can be perceived as an expression of state sovereignty [compare judgment dated January 29, 2008 file reference Pl. ÚS 63/06 (N 21/48 SbNU 223; 90/2008 Sb.), point 26]. Within his discretion thus the Minister of Justice examines also other so-called political aspects (and within those mainly the ones related to foreign politics) of the extradition of the specific person into a foreign state while these aspects cannot by nature of the matter be defined in more detail by the law and the verification and assessment of which from the point of their expedience is not a matter of judicial power and is exercised at the level of constitutional and political responsibility.

51. All these factors of constitutional legal review in full extent reflect the legal conclusion expressed in the above mentioned resolution of the Plenum of the Constitutional Court file reference Pl. ÚS-st. 37/13, by which the Constitutional Court expressed as well its opinion on the question of relationship between the extradition proceedings and proceedings on granting international protection.

52. In the assessed matter it was found that the Minster of Justice issued the contested decision on the grounds of a final decision of the appellate court the enforceability of which had not been affected by the resolution of the Constitutional Court pursuant to § 79 para. 2 of the Act on the Constitutional Court nor by the interim measure of the European Court for Human Rights which would prevent extradition until the moment of his decision on extradition. In spite of that the Constitutional Court cannot find that the conditions for permitting the extradition were satisfied since such a conclusion is prevented by the fact that at the time of issuance of the contested decision the proceedings on the application of the applicant for international protection had not been completed (compare point 6 of this Judgment). The Ministry of the Interior decided on the matter as late as on April 5, 2013 while the Constitutional Court has no knowledge of the Complainant's action against this decision being decided on.

53. Since the issuance of the contested decision on permitting the extradition of the Complainant occurred before the proceedings on his first application for international protection including a potential judicial review being completed the Minister of Justice enabled the Complainant's deprivation of an opportunity to seek assessment of the concerned application in a effective manner and under equal conditions as a result of the potential execution of extradition which had not been executed solely due to the enforceability of the decision being suspended. The outcome of such proceedings was relevant also in relation to the extradition proceedings since should the application of the applicant be granted in virtue of § 393 letter b) of the Code of Criminal Procedure this would make his extradition impossible. The contested decision thus breached his right to judicial and other protection pursuant to Article 36 paras 1 and 2 of the Charter in connection with the right to apply for asylum and simultaneously seek through judicial protection that the relevant body of public power hold on such application as stipulated in Article 43 of the Charter. Thereby he was simultaneously denied his procedural guarantee of the non-refoulement principle in virtue of the applicable legal regulations.

VII.
Conclusion

54. For all of the above reasons the Constitutional Court pursuant to § 82 para. 2 letter a) of the Act on the Constitutional Court partially granted the petition and pursuant to § 82 para. 3 letter a) of the Act on the Constitutional Court quashed the contested decision of the Minister of Justice. In the part directed against the resolutions of the ordinary courts which held that the extradition of the Complainant was permissible the Constitutional Court dismissed the petition pursuant to § 43 para. 1 letter. b) of the Act on the Constitutional Court due to delay.

Instruction: The Judgment of the Constitutional Court cannot be appealed.

In Brno on October 10, 2013