Execution of the judgment of the European Court of Human Rights in case no. 20611/17 – *Komissarov v. the Czech Republic*

Revised Action Report submitted by the Czech Government on 24 July 2024

In its judgment of 3 February 2022, which became final in accordance with Article 44 § 2 b) of the Convention, the Court held that there was a violation of Article 5 § 1 (f) of the Convention on account of unlawful detention of the applicant pending extradition due to delays in concurrently pending asylum proceedings.

The lawfulness requirement of Article 5 § 1 (f) was found not to be complied with for two main reasons. *Firstly*, the asylum proceedings exceeded the special time-limits set by Act No. 325/1999 (the „Asylum Act“) for processing of the asylum application and the delivery of a decision in situations in which extradition and asylum proceedings run concurrently. Under Section 27(7) of the Asylum Act the decision shall be reached by the Ministry of the Interior without undue delay, within 60 days at the latest. Under Section 32(4) of the Asylum Act, if the decision is brought before administrative courts, each of the two levels of jurisdiction has also 60 days to examine the decision. According to the Court, these time-limits represent an important safeguard against arbitrariness as they shall ensure that the overall length of detention pending extradition is not excessive. However, in the present case the administrative decision to dismiss the applicant's application was issued only after eight months and the periods during which the case was examined at two separate judicial instances exceeded the respective prescribed time-limits as well. *Secondly*, the criminal courts deciding on the possibility of further detention of the applicant pending extradition neither acknowledged nor reacted to the delays in the asylum proceedings when dealing with applicant's requests for release from detention.

The present report is intended to inform the Committee of Ministers of individual and general measures that have been adopted to execute the above judgment.

I. INDIVIDUAL MEASURES

Just satisfaction awarded by the Court in the total amount of EUR 9,100 was paid to the applicant on 12 July 2022.[1]

The Government recall that the applicant was released from detention on 15 November 2017 (see § 19 of the Court's judgment).

Furthermore, the Constitutional Court Act offers the possibility to request reopening of the proceedings before the Constitutional Court following the judgment of the Court.[2] The applicant did not avail himself of this possibility.

In view of the aforementioned, the Government are convinced that no other individual measures need to be adopted in this case.

[1] Details could be requested from the Office of the Czech Government Agent.

[2] Section 119 of the Constitutional Court Act as amended by Act no. 404/2012 provides, *inter alia*, that if the Constitutional Court has previously ruled in a case in which an international court finds a violation of human rights or fundamental freedoms guaranteed by an international treaty, it is possible to file a request for reopening of the proceedings in which the ruling was given. Section 119b provides, *inter alia*, that if Constitutional Court's previous judgment (*nález*) was inconsistent with the decision adopted by the international court, it must set it aside. If the Constitutional Court sets aside its judgment, it deals anew with the original constitutional appeal and the new judgment should be based on the legal opinion of the international court.

II. GENERAL MEASURES

A. Raising Awareness and Analysis of the Judgment

The Ministry of Justice has published the translation of the judgment in its new online database of the Court's case law (https://mezisoudy.cz/databaze-judikatury)[3] and its summary in the Government Agent's Newsletter (no. 2/2022). Besides that, translation of the judgment and its summary have also been sent to the respective courts and other relevant authorities involved in the case.

After the delivery of the judgment, the Office of the Government Agent, in cooperation with the Legislative Department and the International Criminal Department of the Ministry of Justice, began to analyse the issue at hand and initiated several discussions with various stakeholders, including the Ministry of the Interior, the Constitutional Court, criminal and administrative courts and Supreme State's Prosecutors Office, about the appropriate measures to prevent the occurrence of similar violations in the future.

The execution of the judgment was also discussed at the 8th meeting of the Committee of Experts for the Execution of Judgments of the Court and the Implementation of the Convention[4] held on 15 November 2022. The adopted general measures and further course of action in the execution of the judgment was then introduced at the 9th meeting of the Committee of Experts held on 5 September 2023.

Stemming from the analysis of the issue at hand, three main areas where adoption of general measures appeared appropriate have been identified, namely: (i) the course of proceedings of the Ministry of the Interior in asylum procedures; (ii) the course of proceedings of the administrative courts in asylum procedures and (iii) the course of proceedings of criminal courts dealing with requests for release from detention pending extradition.

The adoption of general measures, that will be further introduced in more detail, aim to ensure that:

- the Ministry of the Interior, together with the administrative courts, proceed expeditiously in cases of concurrently running asylum and extradition proceedings in accordance with the statutory time-limits which are set appropriately and realistically;

[3] In June 2024 the Ministry of Justice officially launched a new website (https://mezisoudy.cz/) dedicated to international protection of human rights. The website is run by the Government Agent's Office. It includes a database, which provides access to the case-law of the Court. The database contains all the judgments of the Court in the language in which the Court issued them. Above that, he database contains translations of all judgments of the Court against the Czech Republic, hundreds of translations of the most important judgments of the Court delivered against other States and more than 1 700 legal summaries compiled in the Czech language of other relevant and significant judgments and decisions of the Court. The database also connects the case-law of the Court with the case-law of the Constitutional Court of the Czech Republic and the jurisprudence of the European Committee on Social Rights and United Nations Treaty Bodies.

[4] Established as a follow-up to the obligation to reinforce the implementation of the Convention at the national level agreed by and between the Contracting Parties to the Convention at the High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility" of 27 March 2015, it is the Government Agent's advisory body which serves as a forum for analysing and formulating recommendations to the authorities in terms of suitable measures to be adopted for the purpose of implementing the Court's judgments. It is composed of representatives of all ministries, both Chambers of Parliament, highest courts, Office of the Supreme Public Prosecutor, Office of the Public Defender of Rights, academic staff and members of various NGOs operating in the field of fundamental human rights.

– criminal courts deciding on requests for release of persons from detention pending extradition assess whether continuation of their detention is permissible according to Article 5 § 1 (f) of the Convention with respect to the length and the course of the concurrently running asylum proceedings and their assessment is reflected in the reasoning of their decision.

B. THE MINISTRY OF THE INTERIOR'S COURSE OF ACTION IN ASYLUM PROCEEDINGS

Negotiations with the Ministry of the Interior revealed that in practice the following aspects often lead to delays in the asylum proceedings that run concurrently with the extradition proceedings:

– extradition cases tend to be materially and legally complex cases associated with difficulties in obtaining relevant information about the country of origin;

– there may occur delays in the asylum proceedings attributable to the applicants or their representatives;

– there may occur objective and unforeseeable obstacles, such as, for example, a change in the foreigner's state of health or dynamic developments in the country of origin;

It emerged from the above that in many cases it is objectively impossible to meet the time-limit of sixty days for issuing a decision set by the Section 27(7) of the Asylum Act. Therefore, on the basis of an analysis of decision-making practice and negotiations with the Ministry of the Interior, the time-limit set under Section 27(7) of the Asylum Act was as of 1 July 2023 extended from 60 to 90 days. At the same time, this time-limit is suspended for the period which the applicant is granted for supplementing their asylum application, as well as for the period during which the asylum proceedings are interrupted pursuant to Section 26(1)(b) of the Asylum Act, i.e. for the period when the party to the proceedings cannot participate in the proceedings for health or other serious reasons.

The given extension of the time-limit is considered reasonable given the complexity of the cases and all the administrative steps that must be carried out by the Ministry in the matter. Newly, only delays in the proceedings that are attributable to the asylum seeker are not included in the deadline. As such, the special time-limit shall continue to be a benchmark for assessing whether there occurs an undue delay within asylum procedure causing the overall length of detention pending extradition to be excessive.

At the same time, the Ministry of the Interior made assurances that internal processes would be set up in such a way that the newly set time-limit would be respected and that there will be no unjustified periods of inactivity in their course of proceedings. In case the statutory time-limit is nevertheless exceeded, the criminal courts shall ascertain the compatibility of the continued detention with Article 5 § 1 (f) of the Convention when deciding on requests for release from detention to whom the Ministry of Interior is prepared to pass on the necessary information.

Firstly, to observe that the newly set time-limit is followed in practice, an internal monitoring mechanism has been set up. The Ministry of the Interior keeps a monitoring table that contains relevant information about the course of asylum procedure that enables to assess whether the time-limit has been exceeded. According to the monitoring table (see Enclosure 1), after the new time-limit was set there have been eight asylum proceedings running concurrently with the extradition proceedings where the person was, at the same time, being held in detention pending extradition. In five of these cases, the newly set time-limit of 90 days was complied

with by the Ministry of Interior. In one of the cases, which is still pending the decision by the Ministry of Interior, the person was released from detention after three months and twenty-four days. In the other two remaining cases the duration of detention pending extradition while running concurrently with asylum proceedings lasted around six or seven months. In both of these cases, the Ministry of Interior cited the need for translations and for obtaining information on the country of origin as reasons for the prolonged duration of the proceedings.

Secondly, as was also added to the explanatory report of the legislative amendment of Section 27(7) of the Asylum Act, the Ministry of the Interior will provide cooperation to criminal courts deciding on requests for release from detention pending extradition and provide them upon request with detailed and chronologically ordered information about the course of the asylum proceedings indicating whether the time-limits set by the Asylum Act were met and, if not, what were the reasons and whether they can by attributable to the applicant or to the national authorities. With such information, the criminal courts will be equipped to assess the possibility of continuation of detention in line with the obligations stemming from the *Komissarov* judgment.

C. The Administrative Courts' Course of Action in Asylum Proceedings

As already mentioned above, a time-limit of sixty-days is set also for the administrative courts under Section 32(4) of the Asylum Act when deciding on appeals in asylum proceedings running concurrently with extradition proceedings. For the regional courts, the sixty-day time-limit starts to run from the day the administrative action is filed. For the Supreme Administrative Court, the sixty-day time-limit starts to run from the day the appeal on points of law becomes free of defects. Based on discussions with representatives of administrative courts' judges within the Ministry of Justice's working group on administrative justice, one main obstacle was identified for meeting the sixty-day time-limit in practice. It has been observed that a problem may occur with timely identification of the cases falling under the provision since the information that extradition proceedings are being conducted in parallel with the asylum proceedings and that the applicant is being detained may not appear from the action against the decision or the appeal on points of law at first glance. Such information may be observed only after thorough study of the file or from the requested administrative or court files or replies to the lawsuit or cassation complaints. The issue concerns both regional administrative courts as well as the Supreme Administrative Court.

For that reason, as of 1 February 2023 a new specific file mark, that includes the code "EX", was introduced by the Ministry of the Interior in asylum cases which are conducted concurrently with extradition proceedings. This enables administrative courts to timely identify the cases where the conduct of proceedings must be carried out without undue delay in accordance with the shorter time-limits. The Office of the Government Agent has informed all administrative courts about this novelty. Furthermore, in subsequent discussions with representatives of the administrative courts, the measure was considered to be appropriate and effective.

In addition, the President of the Supreme Administrative Court informed all the judges of this court about the *Komissarov* judgment and the need to ensure compliance with the statutory time-limits in similar cases.

The sixty-day time-limit set for the administrative courts under Section 32(4) of the Asylum Act remained unchanged, as the unreasonableness of the length of the time-limit as such has not been raised. This is confirmed also by the monitoring table (see Enclosure 1) which shows that these time-limits are generally complied with.

D. The Criminal Courts' Course of Action when Deciding on the Continuation of the Detention pending Extradition

The third pillar of the execution of the judgment concerns the procedure of criminal courts deciding on requests for release from detention pending extradition. In accordance with the judgments and other relevant case-law of the Court, the criminal courts deciding on requests for release of persons from detention pending extradition are required to assess whether continuation of their detention is permissible according to Article 5 § 1 (f) of the Convention with respect to the length and the course of the concurrently running asylum proceedings.

To discuss this issue, the Office of the Government Agent, in cooperation with the Legislative Department and the International Criminal Department of the Ministry of Justice, held a meeting in June 2023 with the representatives of the Regional and High Criminal Courts, the Prosecutor General's Office and the Constitutional Court. The conclusions of the meeting can be summarised as follows:

- the length of the asylum procedure, which has a direct bearing on the length of detention pending extradition, has been identified as a primary problem in the context of concurrence of extradition and asylum proceedings; however, it was agreed that in light of the Court's case law, the criminal courts deciding on requests for release of persons from detention pending extradition represent an important safeguard when assessing whether continued detention is compatible with Article 5 § 1 (f) of the Convention;
- in order to comply with the requirements of the Convention, the criminal courts shall include in reasoning of their decisions on the continuation of detention pending extradition an assessment whether the continuation of detention is permissible according to Article 5 § 1 (f) of the Convention with respect to the length and the course of the concurrently running asylum proceedings; concretely, they shall assess whether the time-limits under the Asylum Act have been complied with in the asylum procedure; if they have been exceeded, they shall request further information on the course of the procedure from the Ministry of the Interior and, if applicable, the administrative courts, and assess whether the authorities acted diligently without undue delay or whether there have been long and unjustified periods of inactivity in the asylum procedure which cannot be attributed to the applicant for international protection themselves; the criminal courts shall reflect this assessment in their reasoning;
- to ensure the above, there is no need to amend the law at this time as (i) the law itself does not prevent to take the envisaged course of action and (ii) the most efficient measure to achieve the compliance of the practice of domestic courts with the conclusions of the *Komissarov* judgment and other relevant case-law of the Court seems to be training of the judges; furthermore, the extradition cases are being decided by specialised judges in every Regional or High Court; a seminar organised by the Judicial Academy[5] for this a rather limited number of specialized judges once a year was identified as a good forum for targeted awareness-raising;
- to carry out the envisaged assessment, it is necessary for the criminal courts to receive, upon request, detailed and chronologically arranged information about the course of asylum proceedings from the Ministry of the Interior and, if relevant, from

[5] The Judicial Academy, established in 2002 by Act No. 6/2002 Coll., is the central institution of the justice sector for training of judges, state prosecutors and other persons working in the judiciary.

the administrative courts as well, indicating whether the time-limits set by the Asylum Act were met and, if not, what were the reasons and whether they are attributable to the applicant or to the national authorities; effective communication between the Ministry of the Interior, criminal and administrative judges must be, therefore, set up.

On the basis of the above recommendation, a representative of the Office of the Government Agent attended in November 2023 the annual seminar organized by the Judicial Academy for criminal judges specialized in international criminal matters and presented them the obligations stemming from the *Komissarov* judgment and discussed with them in more detail the specific role the criminal courts have in ensuring the compliance with the Convention when deciding on detention pending extradition. The above conclusions were generally accepted by the judges at the seminar.

E. The Final Roundtable of All the Stakeholders

On 8th November 2023, the Office of the Government Agent organized a roundtable where all the relevant stakeholders were gathered to discuss the appropriateness and efficiency of the general measures taken to implement the *Komissarov* judgment. The roundtable was attended by representatives of the Ministry of Justice, the Ministry of the Interior, the Supreme State Prosecutor's Office, judges of the Regional Courts of both, administrative and criminal divisions, judges of the High Courts, the Supreme Administrative Court and the Constitutional Court. The goal of the roundtable was (i) to discuss the general measures taken to implement the judgment so far, their sufficiency and further recommendations, and (ii) to set up an effective communication and exchange of information between the Ministry of the Interior and the administrative and criminal courts.

Overall, the general measures taken were assessed as reasonable and sufficient. Further, there were no obstacles identified for harmonious exchange of information between all the relevant stakeholders. Both, the Ministry of the Interior as well as the representatives of administrative courts showed readiness to pass on the necessary information upon request made by the criminal courts.

The Office of the Government Agent informed about the outcomes of the roundtable all the relevant stakeholders including all the domestic courts. The information included also a model request for information to be made by criminal courts to the Ministry of the Interior and administrative courts. This model request shall simplify the work of the criminal courts and enable them to quickly ask the right questions to obtain the appropriate information from the relevant stakeholders to be able to assess the compatibility of continued detention pending extradition with the Convention.

F. Development of the Constitutional Court's Case-law

On 8th November 2023, the Constitutional Court issued a judgment no. IV. ÚS 652/22 in a case concerning an assessment of lawfulness and proportionality of continued detention pending extradition running concurrently with an asylum procedure. There, in light of the obligations stemming from the *Komissarov* judgment and other Court's case-law, the Constitutional Court confirmed that although the criminal courts deciding on detention pending extradition cannot influence the length of the asylum proceedings or the subsequent judicial review, it is their duty not only to monitor the course of such proceedings but also to assess the reasonableness of the overall length of the detention pending extradition on that basis. The Constitutional Court stressed in the case, that although the criminal courts were aware of such obligation, they

had incorrectly assessed the repeated significant overrun of the statutory time-limits for the adoption of a decision about the asylum request. As a result of which the detention pending extradition lasted for a total of 2 years and 2 months. According to the Constitutional Court, such length of detention should have been regarded as a disproportionate interference with the applicant's right to personal liberty and the request for a release should have been granted.

To conclude, the above judgment follows fully the outcomes of the *Komissarov* judgment. It shows that the Constitutional Court constitutes now another important safeguard in assessing the lawfulness and proportionality of continued detention pending extradition that shall prevent future violations of the Convention at the national level.

III. CONCLUSION

On the basis of the above, the Government of the Czech Republic are of the opinion that all the necessary individual and general measures to execute the present judgment have been taken. With regard to the general measures, the emphasis was placed on the speed of asylum proceedings including its judicial review. The protection of the right to personal liberty was further ensured through the role of the criminal courts as well as the Constitutional Court acting as the guards of the compliance with the Article 5 § 1 (f) of the Convention. Therefore, they propose to the Committee of Ministers to close its supervision of the execution of the judgment.

ENCLOSURE

1. Monitoring table of detention pending extradition running concurrently with asylum proceedings (1st January 2022 – 12 June 2024)

Enclosure 1 - Execution of the judgment of the European Court of Human Rights in case no. 20611/17 - *Komissarov v. the Czech Republic*

Monitoring table of detention pending extradition running concurrently with asylum proceedings (1.1.2022 - 12.6.2024)

No.	Initials	Nationality	Application for international protection (IP)	Decision on IP	Number of days of asylum proceedings (as of 12. 6. 2024)	Stayed according to Section 27(8) - number of days	Time limit complied with	Administrative action	Decision of the regional court	Number of days (60 days according to 32(4)	Time limit complied with	Appeal on points of law	Decision of the Supreme Administrative Court	Time limit of 60 days (since free of defacts) according to Section 32 (4) complied with	Application for international protection (IP)	End of the asylum proceedings including judicial review with suspensive effect	Preliminary detention (from-till)	Extradition detention (from-till)	Duration of detention pending extradition while running concurrently with asylum proceedings (as of 12. 6. 2024)	Remarks (including reasons for exceeding the time limit for issuing a decision in the international protection procedure)
Time limit for the Ministry of the Interiron to issue a decision on an applicatio for international protection pursuant to Section 27(7) of Act. No 325/1999 Coll., on asylum - 60 days																				
1	A.F.	Russia	12.01.2022	28.03.2022	75	10	NO	19.04.2022	22.6.2022 - dismissed	63	NE	x			12.01.2022	22.06.2022	12. 9. 2021 - 21. 4. 2022	none	6 months and 9 days	
2	V.D.	Tajikistan	17.02.2022	09.03.2022	20	x	YES	x							17.02.2022	09.03.2022	17.2.2022 - 29. 3. 2022	none	41 days	
3	M.O.	Ukraine	08.03.2022	27.06.2022	111	15	NO	04.08.2022	3.10.2022 - refused	60	YES	x			08.03.2022	03.10.2022	09.12.2021 - 27. 11. 2022	28.11.2022 - 29. 12. 2022	6 months and 26 days	procurement of documents - materials from criminal proceedings in Moldova
4	V.A.	Georgia	11.03.2022	09.12.2022	273	30	NO	04.01.2023	17.1.2022 - dismissed	13	YES	03.02.2023	30.3.2023 - dismissed	YES	11.03.2022	30.03.2023	2.6.2021 - 10.5.2023	10.5.2023 - 30.6.2023	12 months and 19 days	procurement of background information on the country of origin
5	M.B.	Ukraine	24.03.2022	04.07.2022	102	55	NO	x							24.03.2022	04.07.2022	9.12.2021 - 17.10.2022	17.10.2022 - 3.11.2022	3 months and 11 days	
6	A.I.	Moldova	25.05.2023	29.06.2023	35	x	YES	19.07.2023	1.9.2023 - refused	44	YES	21.09.2023	7.12.2023 - dismissed	would need to be confirmed	25.05.2023	07.12.2023	22. 9. 2022 - 31. 10. 2022 14. 1. 2023 – 21. 12. 2023	none	6 months and 13 days	
1.7.2023 - entry into force of the amendment to Act No. 325/1999 Coll., on Asylum - extension of the deadline under Section 27(7) to 90 days																				
7	P.O.	Georgie	18.07.2023	16.10.2023	90	13	YES	31.10.2023	27.12.2023 - refused	57	YES	x			18.07.2023	27.12.2023	4. 1. 2023 – 20. 7. 2023	20. 7. 2023 - 21. 2. 2024	4 months and 39 days	
8	I.G.	Moldova	09.08.2023	30.10.2023	82	x	YES	29.11.2023	5. 4. 2024 suspended (PQ CJEU)						09.08.2023	pending	9.8.2023 - pending	x	10 months and 3 days	On 5 April 2024 (41 Azs 47/2023), the Brno Regional Court suspended the proceedings on the application of international protection and referred a preliminary question to the CJEU.
9	V.P.	Kazakhstan	24.10.2023	12.06.2024	232	70 days (suspended till 5.6.2024)	NO	x							24.10.2023	12.06.2024	27. 11. 2022 - pending	x	7 months and 19 days (including 70 days for which the asylum proceedings were interrupted)	translations of the materials submitted by the applicant after the interview and after acquaintance with the decision documents (200 pages)
10	S.Ö.	Turkey	08.11.2023	16.05.2024	190	x	NO	x							08.11.2023	16.05.2024	3. 8. 2022 - pending	x	6 months and 8 days	complaint in Turkish - translation 21.11.2023; procurement of documents - information on country of origin
11	V.B.	Moldova	16.02.2024	26.02.2024	10	x	YES	18.03.2024	25.4.2024 no suspensive effect granted						16.02.2024	25.04.2024	17. 4. 2024 - 7. 5. 2024	7. 5. 2024 - 17. 6. 2024	2 months and 9 days	extradition initiated 17. 4. 2024
12	A.S.	Uzbekistan	19.02.2024	pending	114	14	NO	x							19.02.2024	pending	19.2.2024 - 12.6.2024 (released)	none	3 months and 24 days	procurement of documents - coutry of origin information
13	V.I.	Ukraine	22.02.2024	23. 2. 2024 Temporary protection accorded	1	x	YES	x							22.02.2024	23.02.2024	13.12.2023 - pending	x	1 day	On 23.2.2024 asylum proceedings suspended under Article 6 of Act No. 65/2022, as the applicant received temporary protection.
14	B.S.	Tunisia	25.04.2024	12.06.2024	48	x	YES	x							25.04.2024	12.06.2024	20.4.2023 - pending	x	1 month and 18 days	