

**Execution of the judgment of the European Court of Human Rights  
in case no. 20611/17 – *Komissarov v. the Czech Republic*  
Action Plan submitted by the Czech Government on 10 February 2023**

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 plan is intended to inform the Committee of Ministers of individual and general measures that had been or are planned to be 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.<sup>1</sup>

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.<sup>2</sup> 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.

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<sup>1</sup> Details could be requested from the Office of the Czech Government Agent.

<sup>2</sup> Article 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. Article 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 online database of the Court's case law in the Czech language (<http://eslp.justice.cz/>)<sup>3</sup> and its summary in the Government Agent's Newsletter. 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 discussions with various stakeholders about the appropriate measures to prevent the occurrence of similar violations in the future.

The execution of the judgment was further discussed at the 8<sup>th</sup> meeting of the Committee of Experts for the Execution of Judgments of the Court and the Implementation of the Convention<sup>4</sup> held on 15 November 2022.

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

The adoption of general measures will 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;
- 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.

### 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;

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<sup>3</sup> The 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 1000 legal summaries compiled in the Czech language of other relevant and significant judgments and decisions of the Court.

<sup>4</sup> 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.

- 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;
- the time-limit of sixty days for issuing a decision is unrealistically set.

After the analysis of the situation it was agreed to extend the time-limit set under Section 27 (7) of the Asylum Act to 90 days. At the same time, this time-limit shall be 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.

The proposed amendment has already gone through the interdepartmental comment procedure and is now awaiting its approval by the Government. Subsequently, it shall be submitted to the Parliament for its approval within the regular legislative procedure.

To observe that the newly set time-limit is followed in practice, an internal monitoring mechanism will be set up in cooperation with the Ministry of the Interior. A monitoring table will be created where all asylum proceedings running concurrently with extradition proceedings will be recorded. This monitoring table will contain relevant information about the course of asylum procedure that will enable to assess whether the time-limit has been exceeded and whether there are undue delays on the part of the authorities within the asylum proceedings.

As will be 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 information about the course of the asylum proceedings including the information encompassed in the monitoring table.

### *C. THE ADMINISTRATIVE COURTS’ COURSE OF ACTION IN ASYLUM PROCEEDINGS*

At the meeting with the representatives of administrative courts judges, one main obstacle was identified for meeting the sixty-day time-limit set under Section 32 (4) of the Asylum Act when deciding on appeals in asylum proceeding running concurrently with extradition proceedings. 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 lawsuit against the decision or the cassation complaint at first glance. Such information may be observed only after careful 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 was introduced by the Ministry of the Interior in asylum cases which are conducted concurrently with extradition proceedings. This will enable 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 will inform about this novelty all the administrative courts till the end of February 2023.

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.

*D. THE CRIMINAL COURTS' COURSE OF ACTION WHEN DECIDING  
ON THE CONTINUATION OF THE DETENTION PENDING EXTRADITION*

The third pillar of the general measures to be adopted in order to execute the judgment concerns the procedure of criminal courts deciding on requests for release from detention pending extradition. As stipulated above, the goal is to make sure that 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. To discuss this issue, the Office of the Government Agent plans to carry out negotiations with the representatives of criminal courts, the Prosecutor General's Office and the relevant departments of the Ministry of Justice in following months.

### III. CONCLUSION

The Government of the Czech Republic will continue their efforts to execute the judgment according to the above stipulated action plan and will provide the Committee of Ministers with an update on further developments by 31 December 2023.