

CASE LAW COVER PAGE TEMPLATE

| | |
|--|--|
| Name of the court ¹ (English name in brackets if the court's language is not English): Ústavní soud České republiky (Constitutional Court of the Czech Republic) | |
| Date of the decision: (2013/08/13) | Case number: ² Pl. ÚS-st. 37/13 |
| Parties to the case: Plenum of the Senate of the Constitutional Court (Opinion) | |
| Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| If yes, please provide the link: http://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Pl-st-37-13_k_podpisu.pdf (If no, please attach the decision as a Word or PDF file): | |
| Language(s) in which the decision is written: Czech | |
| Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which): | |
| Country(ies) of origin of the applicant(s): The Russian Federation | |
| Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Czech Republic | |
| Any third country of relevance to the case: ³ N/A | |
| Is the country of asylum or habitual residence party to: | |
| The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Relevant articles of the Convention on which the decision is based: Article 33 |
| (Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No | Relevant articles of the Convention on which the decision is based: N/A |
| (Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No | Relevant articles of the Convention on which the decision is based: N/A |
| (For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No | Relevant articles of the Convention on which the decision is based: N/A |
| For EU member states: please indicate which EU instruments are referred to in the decision No reference to EU instruments | Relevant articles of the EU instruments referred to in the decision: N/A |

Topics / Key terms: (see attached ‘Topics’ annex):

Extradition, *non-refoulement*

Key facts (as reflected in the decision): [No more than 200 words]

On 4 March 2011, the Constitutional Court (CC) received a constitutional complaint of Mr. Ali Atsaev against the decision of the Minister of Justice from February 24, 2011 (no. č. j. 2727/2008-MOT-T/119), permitting his extradition to the Russian Federation for the purposes of his criminal prosecution (Constitutional Court’s case file: III. ÚS 665/11). In connection of the aforementioned case, the CC Senate III submitted to the CC Plenum the questions related to the current practice of decisions issued by the Minister of Justice and their “reviewability” by courts.

CC Plenum can issue an Opinion (Stanovisko) which becomes binding on the Senate. The Opinion is not a decision of itself, the questioning Senate is bound by the opinion and after it incorporates that opinion into its decision and the decision is promulgated in a manners set by law, the opinion of the plenum becomes binding for all agencies and individuals in line with the Art. 89(2) of the Constitution of the Czech Republic stating that “Enforceable rulings of the Constitutional Court shall be binding for all agencies and individuals“. The rules of the Constitutional Court are not elaborated when it comes to issuing CC Opinions, but the above described process became a CC practice.

The Plenum expressed its opinion that the decision of the Minister of Justice regarding the extradition is not the decision to remedy the decision of the court that decides on the permissibility of extradition (i.e. that these are two separate lines of proceedings). Thus, the person at which the extradition request aims can lodge independently both a constitutional complaint against the decision of the Higher Court but also against the decision of the Minister of Justice permitting the extradition. Furthermore, given the different nature of both types of proceedings, the person can lodge a constitutional complaint against the Higher Court decision even before the Minister of Justice issues its decision.

Furthermore, the Plenum also expressed its opinion that the Constitutional Court also examines whether or not the extradition is prevented by the fact that the person whose extradition is at issue has been granted international protection in the Czech Republic, or by the fact that no final decision has yet been made on this person’s application for international protection, including, as the case may be, a court review. The purpose of both of the above preconditions for permitting extradition is to guarantee that the extradition will not be in breach of the obligation based on the principle of *non-refoulement* within the meaning of Article 33 (1) of the 1951 Convention relating to the Status of Refugees.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

Disclaimer: This is an unofficial translation, prepared by UNHCR. UNHCR shall not be held responsible or liable for any misuse of the unofficial translation. Users are advised to consult the original language version or obtain an official translation when formally referencing the case or quoting from it in a language other than the original.

- I A decision of the Minister of Justice under Section 399 (1) of Act No. 141/1961 on criminal proceedings (“Rules of Criminal Procedure”), as amended, allowing extradition of a person from the Czech Republic to another state for the purpose of criminal prosecution or the service of an already imposed term of imprisonment or of a protective measure consisting of deprivation of liberty, is not a decision on a remedy against a court decision whereby the extradition of this person was held permissible under Section 397 (1) of the Rules of Criminal Procedure. While the court decides on whether or not there exist any of the grounds specified in Section 393 of the Rules of Criminal Procedure which would render the extradition impermissible, the Minister of Justice himself does not review these conclusions of the court and only examines their accuracy with regard to the option of using his authority to refer the case, should he have any doubts, to the Supreme Court for a review under Section 397 (3) of the Rules of Criminal Procedure. The decision-making of the Minister of Justice on permitting of extradition is — besides considering the political aspects of such extradition, the assessment of which is, as a matter of principle, outside courts’ remit — limited to establishing whether or not the court has decided with finality that the extradition is permissible; whether or not any of the circumstances specified in Section 399 (2) and (4) of the Rules of Criminal Procedure have occurred; and whether or not some other circumstance has occurred that would constitute a legal obstacle to the permission of extradition. For the above reasons, the person whose extradition is at issue can lodge a constitutional appeal both against the High Court’s decision on the complaint against the Regional Court’s order deciding on the permissibility of extradition at first instance, as well as against the decision of the Minister of Justice permitting the extradition. The reason is that these two decisions differ from each other in terms of their purpose and in terms of the subject matter of assessment, and therefore, from the perspective of proceedings before the Constitutional Court, have the nature of decisions on the ultimate procedural means that the law grants to this person to protect this person’s right (Section 72 (3) of Act No. 182/1993 on the Constitutional Court, as amended). The time limit for lodging the constitutional appeal is considered separately for each of these decisions.
- II In the proceeding on a constitutional appeal against a decision of the Minister of Justice under Section 399 (1) of Act No. 141/1961 on criminal proceedings (Rules of Criminal Procedure), as amended, permitting the extradition of the appellant from the Czech Republic to another state, the Constitutional Court also examines whether or not the extradition is prevented by the fact that the person whose extradition is at issue has been granted international protection in the Czech Republic, or by the fact that no final decision has yet been made on this person’s application for international protection, including, as the case may be, a court review. The purpose of both of the above preconditions for permitting extradition is to guarantee that the extradition will not be in breach of the obligation based on the principle of *non-refoulement* within the meaning of Article 33 (1) of the Convention and Protocol relating to the Status of Refugees of 31 January 1967, promulgated under No. 208/1993 in the Official Journal, and Articles 2 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which, being an obligation arising from a treaty on the protection of human rights, takes precedence over other obligations under international treaties. However, in this proceeding the Constitutional Court neither reviews nor reassesses the conclusions as to the law which are contained in the court decision that has held the extradition to be permissible.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

The current practice is that the Minister of Justice decides on the extradition request of a foreign country, after the Regional Court decides whether the extradition is permissible. The person can lodge a complaint against the decision of the Regional Court to the Higher Court. Based on that decision, the Minister of Justice either permits the extradition, does not permit it or based on reasons given by law, terminates the extradition proceedings.

Up to now, the Constitution Court was not united in its opinion whether the decision on extradition of the Minister of Justice shall be considered the last procedural remedy for the purposes of lodging a constitutional complaint to safeguard the rights of the appellant, or whether the constitutional complaint against the decision of the Higher Court is also permissible.

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

Please submit this form to:

Protection Information Unit
Division of International Protection
UNHCR
Case Postale 2500
1211 Genève 2 Dépôt
Switzerland
Fax: +41-22-739-7396
Email: refworld@unhcr.org