

**D E C R E E**

29 December 2004

The Court of Appeal in Wrocław, 2<sup>nd</sup> Criminal Division in the following composition:

Chairman: Court of Appeal Judge Andrzej Krawiec  
Judges: Court of Appeal Judge Edward Stelmasik  
Court of Appeal Judge Wojciech Kociubiński (rapporteur)

Recording clerk: Beata Kicińska

with the participation of the Prosecutor of the Appeal Prosecutor's Office Anna Gwizdalska

after the hearing in the case against Aleksander Filonov

prosecuted for an offence under article 158 item 2 letters a and b of the Criminal Code of the Russian Federation

of the appeal brought forward by the prosecutor

against the decree of the Regional Court in Jelenia Góra

of 6 December 2004, file no. III Kp 92/04

regarding the legal admissibility of extradition

having heard the prosecutor's motion

under article 437 § 1 of the Code of Criminal Procedure

**h a s d e c r e e d**

- I. to keep in force the decision appealed against**
- II. pursuant to article 98 § 2 of the Code of Criminal Procedure to postpone the drafting of the substantiation to the decision until 5 January 2005.**

## S u b s t a n t i a t i o n

By the decree of 6 December 2004, file no. III Kp 92/04, the Regional Court in Jelenia Góra pursuant to article 604 § 1 item 5 of the Code of Criminal Procedure has stated a legal inadmissibility of extradition to the Russian Federation of a citizen of this country, Aleksander Anatolewicz Filonov prosecuted for an offence under article 158 item 2 letters a and b of the Criminal Code of the Russian Federation.

The Regional Court has awarded from the State Treasury PLN 600 to the appointed defender of the prosecuted Aleksander Filonov as a remuneration for the unpaid legal assistance rendered by appointment of the court; the costs of the proceedings have been awarded to the State Treasury.

The decree of the Regional Court has been appealed against by the prosecutor who alleged an error in the actual ascertainments assumed as the basis for the decree influencing its contents and consisting in recognizing that granting Aleksander Anatolewicz Filonov, a citizen of the Russian Federation, a residence permit by the authorities of the French Republic results in the inability to return him to his state authorities by another country than that granting the residence permit. Moreover, that returning him to the requesting authorities would be contradictory to the Geneva Convention of 1951 and the Protocol relating to the status of refugees of 31 January 1967, while in fact the provisions of the convention and the protocol relating to the status of refugees do not apply to Aleksander Filonov since he is in no danger due to his political opinions, religion, race or membership of a particular social group, moreover there is no real risk of him being held criminally liable for a different deed than that specified in the request.

Raising the aforementioned objection the prosecutor motioned for the change of the decree appealed against by issuing a decree on admissibility of extradition of Aleksander Anatolewicz Filonov to the Russian Federation.

### **The Court of Appeal has considered as follows:**

The Republic of Poland is bound with the Russian Federation with a bilateral agreement of 6 September 1996 on legal assistance and legal relations in criminal and civil cases (*Journal of Laws No. 89, item 751*) regulating also the issues of

prosecuted persons. The principle of reciprocity constituting the basis of this agreement establishes the presumption of good faith for each case in which the Russian Federation requests the extradition of a prosecuted person and obliges Poland to a definitely positive reception of such a request (*more on the subject see the decree of the Court of Appeal in Wroclaw of 21.01.2004, II Akz 407/03, OSA 2001/7/54*).

The decree of the court in the issue of a legal admissibility of the extradition of a prosecuted person has to take into consideration also other obligations of Poland arising from the internal legal order, international law, and the Community law. With reference to the regulations contained therein it has to be stated that the granting of the refugee status by the French Republic to the prosecuted Aleksander Filonow pursuant to article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees would make his extradition to the Russian Federation contradictory to Polish law, and that, pursuant to article 64 item 1 no. 5 of the Agreement between the Republic of Poland and the Russian Federation of 16 September 1996 on legal assistance and legal relations in criminal and civil cases (*Journal of Laws No. 89 of 2003, item 751*) it has to be stated that the extradition is inadmissible.

One has to agree with the Regional Court that article 33 item 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees, which pursuant to article 87 § 1 and 91 of the Constitution of the Republic of Poland of 2 April 1997 constitutes part of the national legal order of the Republic of Poland, concerning in particular the institution of deportation and expulsion applies also to the institution of extradition and expresses prohibition to apply it towards the states-parties to the Convention unless the circumstances of article 33 item 2 occur. This provision states that 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. Although the contents of the quoted provision combine an unconditional prohibition to return a refugee to another country with the enumeration of dangers awaiting him in this country, taking into consideration article 1 of the Convention of 28 July 1951 relating to the status of refugees with the additional protocol drafted in New York on 31 January 1967 (*Journal of Laws of 20 December 1991, no. 119, item 517*)

which while specifying the actual premises for granting refugee status make a positive decision on the matter dependant on establishing the same dangers as those referred to in article 33 item 1 of the Geneva Convention, it has to be stated that the validity of a decision on granting refugee status and the fact that it has not been withdrawn by the authorised body means that all the premises expressing the prohibition of extradition referred to in article 33 item 1 of the Convention are valid. Also in the literature the opinion is expressed that granting a citizen of another state a refugee status constitutes pursuant to Polish law an extradition impediment (*see: M. Plachta. Zasady i przeszkody ekstradycyjne. Prok. i Prawo, vol. 7-8 of 2000, p. 35-36*) which is the more justified if one takes into consideration the Act of 13 June 2003 on providing protection for aliens in the territory of the Republic of Poland (*Journal of Laws No. 128, item 1176*) which ties the refugee status with meeting the requirements to be recognized as a refugee specified in the Geneva Convention and the New York Protocol (article 13 item 1), grants extensive protection to refugees (article 3) and contains a prohibition of extradition of an alien holding refugee status without depriving him of the status unless circumstances referred to in article 32 or 33 of the Geneva Convention (article 72) occur (does not apply to the prosecuted Aleksander Filonov).

It remains to be settled whether the decision of the authorised Body of the French Republic on granting refugee status to Aleksander Filonov is valid in the territory of the Republic of Poland where the prosecuted has been detained. In the opinion of the Court of Appeal the answer to a question formulated in such a way has to be positive. Firstly, one should consider the already quoted article 13 item 1 of the Act of 13 June 2003 on providing protection for aliens in the territory of the Republic of Poland pursuant to which the refugee status in the Republic of Poland is granted to an alien who meets the conditions for the recognition as a refugee specified in the Geneva Convention and the New York Protocol, i.e. exactly the same conditions as those required by the Body of the French Republic upon granting refugee status to Aleksander Filonov. Furthermore, the provision contained in article 15 item 1 no. 3 of the act is significant, providing that the authorised Body of the Republic of Poland shall refuse to grant refugee status to an alien who has been granted such status in another state providing actual protection. The logic behind such a regulation leads to one conclusion only – that the Republic of Poland recognizes decisions of other states concerning granting

refugee status to an alien and covers such alien with legal protection arising from the decision to the same extent and scope as in the event of granting him refugee status by the authorised body of the Republic of Poland.

The recognition of the binding force in the territory of the Republic of Poland of decisions granting refugee status issued by bodies of other states is the more justified when it concerns decisions of Bodies of states which, like Poland, are Member States of the European Union. The basis for such an interpretation of these decisions can be in a general way derived from article 31.1 letter c of the Treaty on European Union or article 63 letter c of the Treaty of Rome, but it is clearly provided in the regulation contained in the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (*Official Journal L 304*, 30/09/2004 P. 0012 – 0023), and in particular points 4, 6, 7 and 10 of the preamble, article 2 letter c (definition of a refugee), provisions contained in chapter IV (“Refugee Status”), and in particular articles 13-14 and article 24 (“Residence Permits”).

In view of article 24 of the aforementioned Directive pursuant to which Member States are obliged to issue to beneficiaries of refugee status a so-called residence permit it has to be assumed that the situation of such a person falls within the scope of jurisdiction of Community law. The interpretation of this article has to guarantee its full effectiveness (*effet utile*). It should be stressed that with respect to the refugee status granted to him the prosecuted Aleksander Filonov obtained a travel document from the authorised Body of the French Republic (p. 99, 100 of the case file) which gave him the right of entry to all states apart from Russia and guaranteed a safe return to France within the validity period of the document valid until 8 August 2006. Thus, the prosecuted had the right to take advantage of the privilege he was granted freely without fear that a sanction in the form of an extradition to Russia would happen to him. That means that in this case *effet utile* of the aforementioned article 24, interpreted in connection with the refugee status granted to the prosecuted, would be fictional (would be thwarted) if we assumed that the prosecuted could be extradited to the Russian Federation when he travels to another Member State (*in concreto* Poland).

Summarising the above, it is impossible to share the allegation indicated in the prosecutor's appeal that the Regional Court in Świdnica stating the inadmissibility of extradition of Aleksander Filonov to the Russian Federation has made an error in the actual ascertainments taken as the basis for the decree. The complaint does not take into consideration legal implications arising from the aforementioned provisions of Convention law, Polish and Community law, and as a consequence draws a conclusion which cannot be taken into account.

For the aforementioned grounds the decree of the Regional Court appealed against had to be kept in force.