Decision
In the Name of the Republic

The Prague City Court has issued a following decision in the matter of: XXX versus the Respondent: Ministry of Interior of the Czech Republic.

I. The complaint is rejected.
II. None of the participants to the proceeding is entitled to reimbursement of expenses.
III. The commission for Dr Peter Andris is 2.150 CZK and shall be paid from the Prague City Court account to the complainant´s representative within six days from the date when this decision comes into effect.

Grounds of judgement:
On 21 March 2002, the complainant has submitted a complaint to the High Court in Prague against the decision of the Minister of Interior rejecting an appeal of the complainant against a decision of the Ministry of Interior of 8 October 2001 and confirming the original Ministry´s decision. The complainant claimed that during the asylum procedure, the administrative authority did not accurately establish the facts of the case before issued a decision, that the evidence gathered by the administrative authority was not complete and that the decision was not based on the evidence since it lacks logical connections. The complainant applied for asylum in the CR since he feared that his life is at risk in his country of origin. The complainant is of Chechen nationality and this the cause of his serious problems with Russian residents, including state authorities. The administrative authority did not assess the merit of the claim and stated only that the complainant arrived to the Czech Republic through Poland (i.e. through a safe third country). The complainant strongly objects against this opinion since according to the legislation valid at the time of submission of his claim, the transit country has not been considered as a safe country. He did not reside on the Polish territory and was not aware that in Poland he could submit an asylum application. In the opinion of the complainant, the negative decision of the administrative authority is in contradiction with the 1951 Convention on the Status of Refugees. This Convention stipulates that anyone residing outside his country of origin who has well-founded fears of persecution for one of the stated reasons is a refugee. Restricting the given definition by stipulating, that a person who transited through a country listed in a document established under the Ministry of Interior internal procedure, constitutes a violation of the above mentioned Convention.

In its comments to the complaint, the Respondent suggested to reject the complaint in full and expressed its disagreement with the objections contained there. According to the Respondent, the law does not define term "transit country". If the complainant has in mind the UNHCR position, then it must be realized that it refers to the draft Directive on Minimum Standard for Asylum Procedure in the EU Member States and it must be perceived as such. Moreover, the Respondent does not consider this position to be legally binding. According to the Respondent, the first instance administrative authority rejected the proposal for the initiation of asylum procedure as manifestly unfounded under Article 16(1)(e) of the Asylum Law since the applicant arrived to the Czech Republic through Poland considered by the Czech Republic as a safe third country and the complainant did not prove, that in his case Poland cannot be considered a safe third country. The Respondent referred to an interview carried out with the complainant under the first instance asylum procedure on 24 September 2001: when asked if there

were objective obstacles preventing him from applying for asylum in Poland, the complainant said that he was not aware of such a possibility. He went to the Czech Republic, which was a final destination country for him.

The court found out from the file the following facts:
In his proposal for the initiation of asylum procedure the complainant stated that on 29 August 2001 he left his country of origin, went by bus to Poland (through Belarus), from Poland by train to the Czech Republic and that he stayed in Poland for about half a day. During his interview of 24 September 2001, the complainant stated that he went by bus through Belarus to Brest, from Brest he then continued by bus to Warsaw. From Warsaw he went by train to the Czech Republic. To Warsaw he arrived at five or six o´clock in the morning, the train to the Czech Republic was to leave in the evening. At the borders he met Polish border officials and at the railway station he saw Police officials. Nothing prevented him from asking for asylum in Poland, but he was not aware of this possibility and wanted to go to the Czech Republic.

The file includes the assessment of Poland as a safe third country prepared by the Respondent, which implies that the country acceded to the 1951 Refugee Convention and its 1967 Protocol. The national legislation framework in the area of asylum corresponds to the principles of refugee protection entailed in the Geneva Convention and the New York Protocol; these principles are observed also in the practice. State authorities do not return refugees do countries, where their life or personal freedom could be at risk on the basis of their race, religion, nationality, membership to a special social group or political conviction or where they could face a risk of torture, inhuman or degrading treatment or death penalty or where their life could be at risk because of a war conflict. These criteria are based on the requirements contained in the so-called 1992 London documents, more concretely in the Resolution on a harmonized approach to questions concerning host third countries: (i.e. criteria valid for the EU Member States).

The first instance administrative authority rejected on 8 October 2001 the proposal for the initiation of the asylum procedure as manifestly unfounded under Article 16(1)(e) of the Law No. 325/1999 Coll., on Asylum, claiming that the applicant does not meet the conditions for granting asylum under Article 13(1) and (2) and Article 14 and that there are no obstacles to his departure within the meaning of Article 91 of the Law. The Respondent supported his decision by describing the complainant´s travel route (as indicated in the proposal for the initiation of the asylum procedure and interview of 24 September 2001 mentioned above). The Respondent concluded that the complainant confirmed in his statements that there were no objective reasons for which he would be unable to apply for asylum in Poland. The Respondent therefore rejected the proposal for the initiation of the asylum procedure as manifestly unfounded under Article 16(1)(e) after educing, that Poland is a safe third country within the meaning of Article 2(2) of the Law and because the applicant resided there before his arrival on the CR territory, he was not merely transiting within the meaning of Article 2(2)(b) of the Law No. 325/1999 (as amended after the issuance of this decision).

The complainant submitted an appeal against this decision requesting the re-assessment of his proposal.

The Minister of Interior confirmed the decision of the first instance authority and rejected the appeal. His decision was based on information gathered by the first instance administrative authority that implies that the complainant travelled to Dagestan and went

through Russia by bus to Belarus, from Brest he went by train to Warsaw. In Warsaw he arrived in the morning and he waited at the railway station for his train connection to the CR until the evening. When asked by the first instance administration authority why he did not apply for asylum in Poland, if something prevented him, the applicant replied: "Nothing prevented me but we wanted to go to the Czech Republic." The first instance administrative authority decided to reject the applicant´s proposal and in its explanation it stated that in line with Article 16(1)(e) of the Law, the proposal for initiation of the procedure is rejected as manifestly unfounded if the applicant arrives from a state considered by the Czech Republic as a safe third country unless it is shown that in his case the country cannot be considered as such. The first instance authority therefore came to the conclusion that Poland meets the criteria for a safe third country. During the procedure it was found out that the applicant arrived to the CR from Poland where he stayed for several hours. From the information provided by the applicant about his stay in Poland follows that he could have applied for asylum in that country. The first instance administrative authority therefore did not come to the conclusion that the applicant only transited though the Poland within the meaning of Article 2(2) of the Asylum Law without the possibility to express his will to apply for asylum. The applicant confirmed in his statements that he was not prevented from applying for asylum in Poland. In this case, therefore, conditions of Article 16(1)(e) for the rejection of a proposal as manifestly unfounded were met. In the applicant´s case, no obstacles to departure within the meaning of Article 91 of the Asylum Law were identified. The Minister of Interior, as the second instance administrative authority, reviewed the contested decision and did not find mistakes that would substantiate the cancellation of the decision.

In the opinion of the second instance administrative authority, the first instance administration authority in its decision clearly and sufficiently explained the reasons for rejecting the applicant´s proposal as manifestly unfounded under Article 16(1)(e) of the Asylum Law. The administrative authority agreed with the original decision and had nothing to add to the reasoning of the contested decision. The decision of the first instance authority corresponds to the facts established. It has therefore confirmed the original decision and rejected the appeal.

The Court issued its decision without ordering a hearing since the complainant did not express his disagreement with this type of complaint assessment (Article 51(1) of the Administrative Justice Code) but explicitly agreed.

The Court examined the reasons of the complaint (Article 75(2) of the Administrative Justice Code) and determined that the complaint is not well-founded.

In line with Article 16(1)(e) of the Law, an asylum application is rejected as manifestly unfounded if the applicant arrives from a state considered by the Czech Republic as a safe third country or safe country of origin, unless it is shown that in his case the State cannot be considered as safe. According to Article 2(2), safe third country means a country other than that of the alien's nationality or, in case of stateless persons, the country of his former habitual residence where the alien stayed prior to entry in the Territory and where the alien may return and apply for refugee status under an international agreement[1] without being subject to persecution, torture, inhuman or

[1] Information of the Ministry of Foreign Affairs No. 208/1993 Coll., on the Convention relating to the Status of Refugees and Protocol relating to the Status of Refugees.

degrading treatment or punishment. A country shall not be a safe third country if obstacles to travel referred to in Article 91 can be applied to it. Under Article 2(2)(b) (in wording valid until 31 January 2002), a country is not a safe third country, if the alien only transited through its territory. In wording valid after 1 February 2002, letter b) was deleted.

Before addressing the individual objections it must be emphasized, that the complainant himself did not put forward any objections to the Respondent´s conclusion that Poland can be considered as a safe third country since the complainant did not doubt this conclusion of the Respondent. In this respect, the Court therefore refers to the Respondent´s assessment, which is clear and convincing.

The complainant objects that according to the legislation valid and effective at the time of the submission of a proposal for the initiation of asylum procedure, the transit country was not considered a safe country. This statement, as follows from the above mention quotation of legal provision, is certainly correct, however, it is not significant for the conclusion of the Court itself. In line with Article 75(1) of the Administrative Justice Code., the reviewing function of the Court is based on the facts of the case and on the legal situation existing at the time of the administrative authority decision-making. In case of a two-instance administrative proceeding, judicial complaint refers to the second instance decision. Therefore, the assessment of the complaint looks at the legislation valid at the time when the Minister of Interior issued his decision (i.e. legislation valid as of 1 January 2002 - decision of the appeal was made on 25 February 2003 - where the limitation of the safe third country definition was removed). This is enough to held this objection not well-founded. It is also true that each decision must be in line with the legislation valid and effective at the time of its issuance and according to the temporary provisions (point 1 and 2 of the Law No. 2/2002 Coll.), asylum proposal, which has not been decided upon by 1 February 2002, is considered to be an asylum application and that means (from the substantive law perspective) that the application is assessed under the new legislation. From the procedural perspective: point 2 states that appeal procedure, which was not finalized by 1 February 2002, is to be assessed under the hitherto valid legislation. This is clearly a procedural provision resulting from the transfer of the originally two-level administrative procedure into single-level one (after 1 February 2002, complaints are submitted directly to the court). The application of Article 2(2) of the Asylum Law (in amended wording) at the date of the issuance of the decision on appeal was therefore correct.

The above assessed objection of the complainant is closely related to the next objection - that the Respondent incorrectly interpreted the term “reside on the territory of a safe third country”. As far as the interpretation of the term “resides before the arrival to the territory” used in Article 2(2) is concerned, this term is unspecified in the legislation and the administrative authority must, on the basis of a discretion and using its expert knowledge, appoint to it a concrete meaning. Administrative courts base their decisions in appeal procedures vis-à-vis administrative authorities decisions (as it is in this case) on the perception of an unspecified term in legislative, historical, logical and grammatical context and on which facts the unspecified term is based. The “unspecified term” institute allows for a certain freedom but the consideration focuses on the identification of facts of the case (J. Bureš, L. Drápal, M. Mazanec: Civic Judicial Code, Commentary, fifth edition, Prague, C. H. Beck, 2001, page 1058). The Respondent interpreted the term “reside on the territory of the safe third country" (in line with the establishing decision-making practice) as time period sufficient for the asylum seeker to freely demonstrate his

will to apply for asylum. The complainant, on the other hand, used different interpretation: for the application of the safe third country institute, a short-term presence on the territory of safe third countries is not sufficient, it requires stronger and closer ties to the given country (UNHCR position which is not legally binding for the administrative authority). It must be stressed that according to the decision-making practice even during the time of validity of the previous legislation, the term "transit" has been interpreted in a restrictive manner, mainly on the basis of the whole asylum procedure meaning based in large extent on the principle that an alien persecuted for his political rights and freedoms execution in his country (Article 43 of the Charter of Fundamental Rights and Freedoms) should always apply for asylum in the first country, where he has a real chance to receive refugee status and where his basic rights and freedoms will be observed. Such a place is usually a safe third country within the meaning of Article 2 of the Law No 325/1999 . Asylum legislation of the Czech Republic must be perceived in the context of legal systems valid in other comparable democratic European countries, which also understand the right to asylum as a necessary protection tool but not as a right to choose a country, in which the asylum seeker will want to execute this right. For these reasons, the Respondent´s interpretation is considered by the Court as more logical and in line with the meaning and substance of the asylum institute. It must be noted that the asylum Law defines the term "permanent residence" (according to the Article 2(5), permanent residence country is a state, where a stateless person stayed prior to his arrival to the territory and to which he developed links of a more permanent nature). This term is used for the purposes of defining the "safe country of origin" term (Article 2(1) and (2)). Safe third country then is a country other than a "safe country of origin" and the term "to reside" here, *a contrario* to the term "permanent residence", has another meaning. In this particular case, the Court holds that the administrative authority interpreted the term "to reside" restrictively but not in contradiction with the law (time period during which the alien has a real possibility to apply for protection in a third safe country). This explanation is not in contradiction with the basic premise of the asylum legislation (as mentioned above), i.e. that a refugee is a victim of a committed/potential injustice in his country of origin and that in such circumstances, a refugee seeks protection in first country he manages to get to. This interpretation conforms also to the comparable foreign jurisprudence (a detailed survey see e.g. R. Göbel-Zimmermann, Asyl und Flüchtlingsrecht, C. H. Beck, 1999, p. 90 etc.).

The complainant further claims, that in line with the UNHCR position for, a mere short-term presence on the territory of a third country is not sufficient for the application of the safe third country institute, that this requires stronger and closer ties with the given country and that the Respondent erred by not respecting this position (which is binding for the administrative authority). The Court fully agrees with the comment of the Respondent that the position refers to a *draft* Directive on Minimum Standards for Asylum Procedures in the EU Member States and that it is of commendatory, not legally binding nature. This position is fully in line with Article 35 of the Refugee Convention that contains no provision under which a UNHCR position should be considered as legally binding for administrative authorities deciding in the asylum proceeding. The Court therefore considers this objection as not well-founded.

The complainant further objects that the Respondent has not been entitled to use the term third safe country, since it limits the refugee definition contained in the Refugee Convention. This objection is unfounded since the quoted Convention itself does not indicate the type of procedure that should be adopted for the assessment of an asylum claim and leaves it up to each state to determine the procedure it considers most suitable

in the context of its constitutional and administrative structures. If, in the interest of the asylum procedure simplification, states parties to the Convention use the term safe third country, it is not in contradiction with the Convention. An internal mechanism is then needed to determine, which country can be considered as a safe third country. It is not important that in the case of the Czech Republic this is done through internal assessment mechanisms of the Ministry of Interior. For the reviewing function of the Court it is important, if the Court can agree the given assessment as a correct one or not. Protection of an asylum seeker is ensured by the fact, that both terms ("safe country" and "safe third country") used in the Law are refutable legal assumptions, the validity of which the complainant may refute through submission of an evidence (Article 16(1)(e) *in fine*: .."unless it is shown that in his case the country cannot be considered as such"). However, in this case the complainant did not submit any such evidence since, as said before, he did not object against the assessment of Poland as a safe third country.

The last objection claims mistakes in the substantiation. In the Court´s opinion, all legislative provisions have been observed. During the interview, the complainant had a chance to comment on reasons, for which he wishes to apply for asylum in the CR and he also stated all facts important for the decision made the Respondent. The last objection is therefore also considered unfounded, especially since not been concretely elaborated.

The complaint is therefore rejected under Article 78(7) of the Administrative Justice Code.