

SVK-2008-2-001

a) Slovakia / b) [Constitutional Court](#) / c) Senate / d) 26-06-2008 / e) II. ÚS 111/08 / f) / g) *Zbierka nálezov a uznesení Ústavného súdu Slovenskej republiky* (Official Digest) / h) CODICES ([Slovak](#)).

Keywords of the Systematic Thesaurus:

- [02.01.01.04.04](#) Sources - Categories - Written rules - International instruments - **European Convention on Human Rights of 1950.**
- [02.01.03.02.01](#) Sources - Categories - Case-law - International case-law - **European Court of Human Rights.**
- [02.02.01.02](#) Sources - Hierarchy - Hierarchy as between national and non-national sources - **Treaties and legislative acts.**
- [02.02.01.05](#) Sources - Hierarchy - Hierarchy as between national and non-national sources - **European Convention on Human Rights and non-constitutional domestic legal instruments.**
- [02.02.02.02](#) Sources - Hierarchy - Hierarchy as between national sources - **The Constitution and other sources of domestic law.**
- [03.09](#) General Principles - **Rule of law.**
- [05.01.01.03](#) Fundamental Rights - General questions - Entitlement to rights - **Foreigners.**
- [05.01.04.01](#) Fundamental Rights - General questions - Limits and restrictions - **Non-derogable rights.**
- [05.03.03](#) Fundamental Rights - Civil and political rights - **Prohibition of torture and inhuman and degrading treatment.**
- [05.03.13.02](#) Fundamental Rights - Civil and political rights - Procedural safeguards, rights of the defence and fair trial - **Effective remedy.**

Keywords of the alphabetical index:

[Extradition, torture](#) / [Extradition, information about receiving state](#) / [Extradition, competence](#) / [Obligation, international, state](#) / [Treaty](#), on human rights, direct applicability.

Headnotes:

Under Slovak extradition legislation, there are two stages to decision-making on extradition. The first is done by ordinary (criminal) courts, and the second by the Minister of Justice. The ordinary legislation in literal terms and in literal interpretation only allows the Minister to take account of important human rights. In practice, however, the ordinary courts must also take human rights into account and carry out the «substantial grounds for believing» test. This duty derives from the principle that the courts are in the first place protectors of human rights; also from the direct applicability of the Constitution and human rights-treaties; and from the fact that decision-making by the Minister cannot be considered as an effective legal remedy.

Summary:

I. The Constitutional Court was considering a complaint by an Algerian citizen who was detained in Slovakia for the purpose of extradition to Algeria, where he had been sentenced *in*

absentia to life imprisonment for criminal acts related to terrorism and for the criminal act of falsification and use of false documents. The ordinary courts (regional court, Supreme Court) allowed his extradition, but because of the wording (and literal interpretation) of the code of criminal procedure, the Supreme Court refused to take human rights into account. The complainant stated that if extradited he would be exposed to the risk of ill-treatment. In his view, this matter should have been evaluated by ordinary courts. The complainant submitted this complaint after the decisions of the courts, but before the case could be referred to the Minister of Justice. The complainant claimed the violation of his fundamental right not to be subjected to torture or to cruel, inhuman or degrading treatment (as guaranteed by Article 16.2 of the Constitution and by [Article 3 ECHR](#)), which was allegedly caused by the procedure and decision of the Supreme Court. The Constitutional Court deferred the execution of the challenged decision using an interim measure.

II. In its decisions on merits, the Constitutional Court stressed that all courts are under a duty to protect human rights and fundamental freedoms of individuals against the intervention of public power.

Ill-treatment is prohibited in absolute terms by Article 16.2 of the Constitution, and by [Article 3 ECHR](#). Neither the Constitution nor the ECHR contains a limitation clause on these rights. The Constitutional Court has repeatedly emphasised the categorical nature of the prohibition of ill-treatment in its findings III. ÚS 7/01, I. ÚS 4/02, III. ÚS 86/05, III. ÚS 194/06, and II. ÚS 271/07. The Constitutional Court has also pointed out the binding force of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, the «Convention against Torture»), and the International Convention on Civil and Political Rights (hereinafter, «ICCPR»).

The Constitutional Court stated that it is within the jurisdiction of the Slovak Republic to extradite the requested individual (the extradition is assumed by the European Court of Human Rights itself), and because the matter deals with extradition to Algeria, it is also necessary to take into consideration the bilateral agreement between the Slovak Republic and the Republic of Algeria.

The fundamental human rights of any extradited person may be breached by a foreign public power. The extraditing state must therefore consider the human rights aspect of the extradition in a robust albeit sensitive manner. From that perspective, the type of act which the person subject to extradition may have committed is irrelevant, as is the particular criminal act for which he has been sentenced when the issue is about extradition for the purpose of serving that sentence.

Article 3 of the Convention against Torture, which is binding on the Slovak Republic, provides that «no State Party shall... extradite a person where there are substantial grounds for believing that he would be in danger of being subjected to torture». The *Soering* Judgment of 1989 is part of European heritage and standard in the protection of human rights. In the *Soering* case, the European Court of Human Rights stated that the requested state is also responsible for potential violations of [Article 3 ECHR](#) outside its territory. The opposite would be contrary to the principle that provisions of the Convention should be interpreted and applied so as to make its safeguards practical and effective. The Constitutional Court stated that Article 3 of the Convention against Torture thus becomes part of the [Article 3 ECHR](#). Similarly according to Ordinary Comment no. 20 of the Committee concerning prohibition of torture and cruel treatment or punishment (Article 7 ICCPR), state parties must not expose

individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. The Constitutional Court stated that Article 16.2 of the Constitution also includes a prohibition on extradition where there are substantial grounds for believing that the person concerned would risk being subjected to ill-treatment. This prohibition is therefore valid within the Slovak Republic under Article 16.2 of the Constitution, Article 3 of the Convention against Torture, [Article 3 ECHR](#) and Article 7 ICCPR. The Constitutional Court also referred to the recent European Court of Human Rights Judgment *Saadi v. Italy*. The Constitutional Court maintained that it is absolutely necessary for the Slovak Republic to responsibly perform the «substantial grounds for believing» test, and specified the state authorities of the Slovak Republic that have this duty.

The Supreme Court stated in its reviewed decision that the consideration of human rights does not fall within its extradition competence. According to the Constitutional Court, in the Slovak Republic, with its mixed model of extradition procedural law, decision-making on extradition is divided between the ordinary courts and the Minister of Justice. The regional court and the Supreme Court form two instances in decision making on the permissibility of extradition. If the courts decide that extradition is permissible, the Minister of Justice either allows it, or he may refuse it if human rights are endangered. Considering the tradition of international public law, as well as the practical requirements, the internal bodies for extradition as part of international relations are the executive power bodies ? in this case, the Minister of Justice.

The Constitutional Court examined the question of whether ordinary courts were under a duty to evaluate the permissibility of extradition from a human rights perspective. The Constitutional Court stated that the traditional permissibility conditions of extradition (substantive extradition law), which courts are required to evaluate according to the Code of Criminal Procedure, are enlarged by the human rights perspective by the direct application (*lacunae legis* in the ordinary law) of the Constitution and human rights treaties. In a state governed by the rule of law, courts are in the first place protectors of human rights because of their independence and because they are bound only by law.

The Constitutional Court expressed the opinion that the basic element of the *ordre public* in the Slovak Republic is the respect for human rights in line with European standards. From the *ordre public* and its systematic incorporation into the Criminal Procedure Code, it is clear that this is not only binding on the Minister of Justice, but also on the ordinary courts.

The Constitutional Court took the stance that a decision by the Minister of Justice cannot be considered an effective legal remedy after decisions of the ordinary courts according to Article 3 in connection with [Article 13 ECHR](#). Under the Code of Criminal Procedure, the Minister alone may consider human rights, his or her decision may be political, there is no access to the Minister for complainants, and there is no procedure for the Minister's decision-making. Neither is there any need to divulge the reasons behind the decision. Only a court decision could constitute such a remedy (*Chahal v. the United Kingdom*). Thus, both ordinary courts and the Minister are obliged to take human rights into account.

The expressed legal opinions are supported by foreign case-law, for example by the Constitutional Court of the Czech Republic (I. ÚS 752/02 [[CZE-2004-3-013](#)], III. ÚS 534/06), and the Spanish Constitutional Court.

The Constitutional Court finally stated that the Supreme Court, by failing to perform the «substantial grounds for believing» test, by criticising the procedure of the Regional Court (which partially evaluated the human rights context of extradition), and by ignoring the possibility of infringement of the complainant's human rights violated the procedural component of Article 16.2 of the Constitution and [Article 3 ECHR](#). The Constitutional Court maintained that ordinary courts must review the case, evaluate the relevant information, perform the «substantial grounds for believing» test, take into account the documents submitted by the complainant, and, possibly at their own initiative obtain other documents. These could have been obtained from the U.N. High Commissioner for Refugees, the Slovak Helsinki Committee, the Slovak National Center for Human Rights, Amnesty International, Human Rights Watch, reports of the United States Department of State, as well as the comments by the U.N. Committee against Torture relating to Algeria.

The Constitutional Court examined the bilateral agreement between Algeria and the Czechoslovak Socialist Republic as to legal assistance in civil, family and criminal cases. The Constitutional Court stated under the wording of the agreement, extradition is not permissible if the legal order of either party forbids it. If ordinary courts establish that a complainant may face the threat of ill-treatment, then extradition is not permissible because the Slovak legal order does not allow it.

The Constitutional Court noted how sensitive the issue of the value (public good) of the Slovak Republic's citizens' security was. The purpose of extradition is to prevent perpetrators from fleeing justice. According to the Code of Criminal Procedure, if a decision was made in extradition proceedings that the extradition was not permissible and the Minister had not allowed the extradition, the Ministry of Justice would have submitted the case, in accordance with the legal order for criminal prosecution, to the Attorney Ordinary's Office of the Slovak Republic.

Supplementary information:

It must be emphasised that the Constitutional Court did not decide whether the complainant should be extradited. It simply decided that criminal courts must carry out the «substantial grounds for believing» test. The Supreme Court subsequently decided that the complainant could not be extradited.

Cross-references:

Constitutional Court of the Cech Republic:

- no. I.US 752/02, 15.04.2003, *Bulletin* 2004/3 [[CZE-2004-3-013](#)].