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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**15th meeting of the Joint Council  
on Constitutional Justice**

**MINI-CONFERENCE ON**

**“MIGRATION”**

**Venice, Italy**

**8 June 2016**

**Recent Judgments by the Constitutional Court of the  
Czech Republic on migration/asylum issues**

**REPORT BY**

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## **Recent Judgments by the Constitutional Court of the Czech Republic on Migration/Asylum issues**

Both cases of the Constitutional Court of the Czech Republic from last year I would like to present deal with migrants/asylum seekers in connection with the right not to be subjected to inhuman or degrading treatment under Article 7 (2) of the Charter of Fundamental Rights and Freedoms and Article 3 of the European Convention on Human Rights.

### ***Judgment File No. I. ÚS 860/15: Degrading treatment within the process of administrative expulsion of a foreign national and the related requirement for effective investigation***

The complainant was to be expelled from the Czech Republic, but was advised of this fact in a facility for detention of foreign nationals where he was detained with a view to his expulsion less than 24 hours in advance. He refused to co-operate with the police in the process of his expulsion and the police therefore used tear gas, cuffed him and used a restraining belt during the escort. At the airport, the complainant was moved by the police using a baggage trolley. The captain of the aircraft ultimately refused to take him on board as, in his opinion, the complainant presented a risk for the flight. The complainant challenged the procedure taken by the police officers by a complaint filed with the police and also a criminal complaint.

The Constitutional Court followed from the case-law of the European Court of Human Rights according to which degrading treatment need not necessarily be caused by one of the objected circumstances alone, but may also follow from a combination of such circumstances. The minimum threshold for gravity would not be exceeded, in itself, by the use of tear gas, use of handcuffs and restraining belt or failure to inform the complainant of the imminent expulsion at least 24 hours in advance. However, altogether, all these steps and means must have caused feelings of anxiety and inferiority on his part to such an extent that the gravity of the conduct corresponded to degrading treatment in violation of Art. 7 (2) of the Charter and Art. 3 of the Convention.

The complainant's rights were thus violated both by the police intervention within the process of administrative expulsion and by the contested decisions of the prosecuting bodies on the grounds of failure to pursue effective investigation. The Constitutional Court therefore quashed the decision of the public prosecutor's offices.

### ***Resolution File No. IV. ÚS 3608/14: Reasons for expulsion of a Ukrainian national diagnosed with AIDS in terminal stage***

The Constitutional Court further dealt with a very interesting, and previously unresolved, question in its resolution of 20 April 2015, where it rejected as clearly unfounded a constitutional complaint filed by an unsuccessful applicant for international protection (a Ukrainian national), who had been diagnosed with AIDS in terminal stage after arriving in the Czech Republic. The complainant primarily asserted that if he was returned to the country of origin, he would be exposed to inhuman and degrading treatment, as he would not have access to appropriate health care in Ukraine. The Constitutional Court stated that a mere lower level of health care in the country of origin, in the absence of further circumstances, cannot form grounds for granting asylum. The complainant did not find out about his disease until he arrived in the Czech Republic and, in the opinion of the Constitutional Court, his conclusions as to insufficiency of

appropriate medicines or his social marginalization were mere speculations, not supported by any evidence. In conclusion, the Constitutional Court also rejected the complainant's allegation that he should be granted humanitarian asylum, primarily because there existed no legal entitlement to it. Review of administrative discretion in these cases goes clearly beyond the scope of the review powers of the Constitutional Court, which may only examine whether or not the common courts or administrative authorities used arbitrary interpretation of the relevant provisions, which however was not established in the case at hand.

# Recent judgments by the Constitutional Court of the Czech Republic on migration/asylum issues

Tereza Skarkova



## Right to protection from inhuman or degrading treatment

### **European Convention on Human Rights**

#### **ART. 3 Prohibition of torture**

- No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **Charter of Fundamental Rights and Freedoms**

#### **ART. 7 (2)**

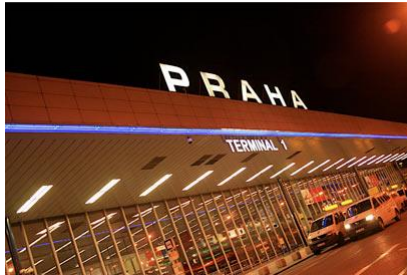
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.



## **Degrading treatment within the expulsion process and the related requirement for effective investigation**

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**Judgment File No. I. ÚS 860/15 of 27 October 2015**



<http://www.letiste-praha-ruzyne.cz/>

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## **Reasons for expulsion of a Ukrainian national diagnosed with AIDS in terminal stage**

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**Resolution File No. IV. ÚS 3608/14 of 20 April 2015**



<http://www.hledamzdravi.cz/vliv-vitaminu-d-na-lecbu-hiv-viru/>

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Thank you for your attention.

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