



Constitutional Court

TRANSLATION
Judgment No. 163/2022
Of 8 December 2022
Roll number : 7871
EXCERPT

Subject : the request for suspension of Article 5 of the law of 30 July 2022 on the assent for the following international instruments : 1) the Convention between the Kingdom of Belgium and the Republic of India on mutual assistance in criminal matters, executed in Brussels on 16 September 2021, and 2) the Treaty between the Kingdom of Belgium and the United Arab Emirates on mutual assistance in criminal matters, executed in Abu Dhabi on 9 December 2021, and 3) the Treaty between the Kingdom of Belgium and the United Arab Emirates on extradition, executed in Abu Dhabi on 9 December 2021, and 4) the Treaty between the Kingdom of Belgium and the Islamic Republic of Iran on the transfer of sentenced persons, executed in Brussels on 11 March 2022, and 5) the Protocol of 22 November 2017 amending the Additional Protocol to the Convention on the transfer of sentenced persons, signed on 7 April 2022 in Strasbourg », introduced by Farzin Hashemi and others.

The Constitutional Court,

comprised of the Presiding Judges P. Nihoul and L. Lavrysen, and the judges T. Giet, J. Moerman, M. Pâques, Y. Kherbache, T. Detienne, D. Pieters, E. Bribosia and W. Verrijdt, assisted by the Clerk of the Court F. Meersschaut, chaired by the Presiding Judge P. Nihoul,

after having deliberated thereon, renders the following judgment :

I. Subject matter of the application and procedure

By a request sent to the Court by registered mail on 3 October 2022 and which arrived at the Court Registry on 5 October 2022, an application for suspension of Article 5 of the law of 30 July 2022 on the assent for the following international instruments : 1) the Convention between the Kingdom of Belgium and the Republic of India on mutual assistance in criminal matters, executed in Brussels on 16 September 2021, and 2) the Treaty between the Kingdom of Belgium and the United Arab Emirates on mutual assistance in criminal matters, executed in Abu Dhabi on 9 December 2021, and 3) the Treaty between the Kingdom of Belgium and the United Arab Emirates on extradition, executed in Abu Dhabi on 9 December 2021, and 4) the Treaty between the Kingdom of Belgium and the Islamic Republic of Iran on the transfer of sentenced persons, executed in Brussels on 11 March 2022, and 5) the Protocol of 22 November

2017 amending the Additional Protocol to the Convention on the transfer of sentenced persons, signed on 7 April 2022 in Strasbourg » (published in the *Belgian Monitor* of 4 November 2022), second edition), was introduced by Farzin Hashemi, Maryam Rajavi, Ahmed Ghozali, Sid Alaoddin Jalalifard, Giulio Terzi Di Sant'Agata, Robert G. Torricelli, Javad Dabiran, Tahar Boumedra, Linda Chavez, Ingrid Betancourt and the organisation governed by French law «The National Council of Resistance of Iran », assisted and represented by Maître F. Tulkens and Maître J. Renaux, barristers in Brussels.

By the same request, the applicants are also asking for the annulment of the same legal provision.

(...)

II. *With regard to the law*

(...)

Regarding the challenged legislative provision and its legislative context

B.1.1. Article 1 of the law of 23 May 1990 « on the transfer of sentenced persons between States, the takeover and the monitoring of the supervision of conditionally sentenced or conditionally released persons as well as the takeover and the monitoring of the enforcement of custodial sentences » (hereinafter : the law of 23 May 1990), provides :

« Le Gouvernement peut, en exécution des conventions et traités conclus avec les États étrangers sur la base de la réciprocité, accorder le transfèrement de toute personne condamnée et détenue en Belgique vers l'État étranger dont elle est le ressortissant ou accepter le transfèrement vers la Belgique de tout ressortissant belge condamné et détenu à l'étranger, pour autant toutefois :

- 1° que le jugement prononçant condamnation soit définitif;
- 2° que le fait qui est à la base de la condamnation constitue également une infraction au regard de la loi belge et de la loi étrangère;
- 3° que la personne détenue consente au transfèrement.

Au sens de la présente loi, le terme de ‘ condamnation ’ vise toute peine ou toute mesure privative de liberté prononcée par une juridiction pénale en complément ou en substitution d'une peine ».

B.1.2. Article 4 of the law of 23 May 1990 provides :

« Lorsqu'en application d'une convention ou d'un traité international, une demande est adressée à l'État belge ou par l'État belge en vue de transférer une personne condamnée et détenue en Belgique vers l'État étranger dont elle est le ressortissant, cette personne est entendue par le procureur du Roi près le tribunal du lieu de détention, qui l'informe de cette demande et des conséquences qui découleraient du transfèrement.

Elle est assistée d'un conseil, soit lorsqu'elle le demande, soit lorsque le procureur du Roi l'estime nécessaire compte tenu de l'état mental ou de l'âge du détenu ».

B.1.3. Article 5 of the law of 23 May 1990 provides :

« Le consentement est irrévocable pendant une période de 90 jours à dater de celui de la comparution.

Si le transfèrement n'a pas eu lieu à l'expiration de ce délai, le condamné peut librement révoquer son consentement, par lettre adressée au directeur de l'établissement pénitentiaire, jusqu'au jour où lui est notifiée la date du transfèrement ».

B.1.4. Article 27 of the law of 23 May 1990, as inserted by Article 20 of the law of 26 May 2005, provides :

« Les peines ou mesures privatives de liberté dont l'exécution a été transférée à un État étranger ne peuvent plus être exécutées en Belgique, sauf si l'État étranger communique que l'exécution est refusée ou est impossible ».

B.2. Article 5 of the law of 30 July 2022 « on the assent for the following international instruments : 1) the Convention between the Kingdom of Belgium and the Republic of India on mutual assistance in criminal matters, executed in Brussels on 16 September 2021, and 2) the Treaty between the Kingdom of Belgium and the United Arab Emirates on mutual assistance in criminal matters, executed in Abu Dhabi on 9 December 2021, and 3) the Treaty between the Kingdom of Belgium and the United Arab Emirates on extradition, executed in Abu Dhabi on 9 December 2021, and 4) the Treaty between the Kingdom of Belgium and the Islamic Republic of Iran on the transfer of sentenced persons, executed in Brussels on 11 March 2022, and 5) the Protocol of 22 November 2017 amending the Additional Protocol to the Convention on the transfer of sentenced persons, signed on 7 April 2022 in Strasbourg » (hereinafter : the law of 30 July 2022) provides :

« Le Traité entre le Royaume de Belgique et la République islamique d’Iran sur le transfèrement de personnes condamnées, fait à Bruxelles le 11 mars 2022, sortira son plein et entier effet ».

B.3.1. The control of constitutionality of a law assenting to an international treaty can only be useful if it takes into account the content of the relevant provisions of that treaty.

B.3.2. The Treaty between the Kingdom of Belgium (hereinafter : Belgium) and the Islamic Republic of Iran (hereinafter : Iran) on the transfer of sentenced persons, executed in Brussels on 11 March 2022 (hereinafter : the treaty of 11 March 2022), provides :

« ARTICLE 1 – Definitions

For the purposes of this Treaty :

1. ‘ Sentence ’ means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
2. ‘ Judgement ’ means a decision or order of a court imposing a sentence;
3. ‘ Sentencing State ’ means the State in which the sentence was imposed on the person who may be, or has been, transferred;
4. ‘ Administering State ’ means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
5. ‘ Sentenced person ’ means a person who has been sentenced under a judgment issued by the courts of one of the Parties to imprisonment or deprivation of liberty for commitment of a criminal offence;
6. ‘ Data ’ means : all information relating to an identified or identifiable natural person.

ARTICLE 2 - Central Authorities

For the purpose of implementation of this Treaty the Parties shall designate a Central Authority :

- a. In the case of the Islamic Republic of Iran., the Central Authority is the Ministry of Justice;
- b. In the case of Belgium, the Central Authority is the Federal Public Service for Justice.

ARTICLE 3 - General Principles

1. The Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Treaty.

2. A person sentenced in the territory of a party may be transferred to the territory of the other Party, in accordance with the provisions of this Treaty, in order to serve the remaining period of the sentence imposed on him. To that end, he may express his interest to the Sentencing State or to the Administering State in being transferred under this Treaty.

3. Transfer may be requested by either the Sentencing State or the Administering State.

ARTICLE 4 - Conditions for Transfer

1. A sentenced person may be transferred under this Treaty only on the following conditions :

a. if that person is a national of the Administering State;

b. if the judgment is final and enforceable;

c. if, at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve or if the sentence is indeterminate;

d. if the transfer is consented to by the sentenced person or, where in view of his age or his physical or mental condition either State considers it necessary, by the sentenced person's legal representative, except in the cases mentioned in Articles 8 and 12;

e. if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the Administering State or would constitute a criminal offence if committed on its territory; and

f. if the sentencing and Administering States agree to the transfer.

2. In exceptional cases, the Parties may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1.c of this Article.

ARTICLE 5 - Obligation to Furnish Information

1. Any sentenced person to whom this Treaty may apply shall be informed by the Sentencing State of the substance of this Treaty.

2. If the sentenced person has expressed an interest to the Sentencing State in being transferred under this Treaty, that State shall so inform the Administering State as soon as practicable after the judgement becomes final.

3. This information shall include :

a. the name, father's name, nationality, date and place of birth of the sentenced person;

b. his address, if any, in the Administering State;

c. a statement of the facts upon which the sentence was based;

d. the nature, duration and date of commencement of the sentence.

4. If the sentenced person has expressed to the Administering State his interest in being transferred by virtue of this Treaty, the Sentencing State shall, on request, communicate to the Administering State the information referred to in paragraph 3 above.

5. The sentenced person shall be informed, in writing, of any action taken by the Sentencing State or by the Administering State under the preceding paragraphs, as well as of any decision taken by either State on a request for transfer.

ARTICLE 6 - Request and Replies

1. Request for transfer and replies shall be made in writing.

2. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the request for transfer.

3. All communications between the Parties shall be made in writing and sent through diplomatic channels.

ARTICLE 7 - Supporting Documents

1. The Administering State, if requested by the Sentencing State, shall furnish it with :

a. a document or statement indicating that the sentenced person is a national of that state;

b. a copy of the relevant law of the Administering State which provides that the acts or omissions on account of which the sentence has been imposed in the Sentencing State constitute a criminal offence according to the law of the Administering State, or would constitute a criminal offence if committed on its territory;

2. If a transfer is requested, the Sentencing State provide the following documents to the Administering State, unless either State has already indicated that it will not agree to the transfer :

a. a certified copy of the judgement and the law on which it is based;

b. a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;

c. other than the cases mentioned in Articles 8 and 12, a declaration containing the consent to the transfer as referred to in Article 4,1.d.;

d. a report of the conduct of the sentenced person during his detention if any; and

e. whenever appropriate, any medical or social reports on the sentenced person, information about his treatment in the Sentencing State, and any recommendation for his further treatment in the Administering State.

3. Either State may ask to be provided with any of the documents or statements referred to in paragraphs 1 or 2 above before making a request for transfer or taking a decision on whether or not to agree to the transfer.

ARTICLE 8 - Consent and its Verification

1. The Sentencing State shall ensure that the person required to give consent to the transfer in accordance with Article 4.1.d does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the Sentencing State.

2. The Sentencing State shall afford an opportunity to the Administering State to verify through a consul or other official agreed upon with the Administering State, that the consent is given in accordance with the conditions set out in the paragraph above.

ARTICLE 9 - Data Protection

1. The Parties shall ensure that the data transferred from one Party to another shall be used only for the purpose of executing a request, pursuant to this Treaty. No data shall be used for any other purpose, or transferred to any third country without prior approval of the Party which transferred the data.

2. The Parties shall ensure the accuracy of personal data transferred pursuant to this Agreement and they shall ensure that appropriate measures shall be taken in order to protect the transmitted data against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.

3. Transferred data shall be kept for no longer than is necessary for the purposes for which they are processed, pursuant to this Agreement. The Parties shall consult each other on the need to rectify inaccurate, incomplete or unreliable data or the desire or need to erase data or to restrict the use of data.

4. The parties shall ensure that data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, or personal data concerning a person's health, sex life or sexual orientation are subject to appropriate safeguards.

5. The sentenced person may be provided with information on the categories of data transferred, the purpose of the data transfer.

6. The sentenced person shall be provided with a right to lodge a complaint when he or she considers that his or her rights regarding the processing of his or her data on the basis of this Agreement have been infringed.

ARTICLE 10 - Effect of Transfer for the Sentencing State

1. The taking into charge of the sentenced person by the authorities of the Administering State shall have the effect of suspending the enforcement of the sentence in the Sentencing State.

2. The Sentencing State may no longer enforce the sentence if the Administering State considers enforcement of the sentence to have been completed.

ARTICLE 11 - Effect of Transfer for the Administering State

1. The competent authorities of the Administering State shall continue the enforcement of the sentence either immediately or by virtue of a court or administrative order, under the conditions set out in Article 12.

2. The enforcement of the sentence shall be governed by the law of the Administering State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 12 - Nature and Duration of the Penalty

1. The Administering State is bound by the legal nature and duration of the sentence arising from the conviction.

2. However, if the nature or duration of this sentence is incompatible with the legislation of the Administering State, or if its legislation so requires, the Administering State may, by court or administrative order, adjust this sentence to the sentence or order which would be handed down under its own law for offences of the same nature.

The nature of this sentence or order shall correspond as far as possible to that of the sentence to be enforced. It shall not aggravate the nature or duration of the penalty passed in the Sentencing State or exceed the maximum laid down by the law of the Administering State.

ARTICLE 13 - Pardon, Amnesty, Commutation

Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

ARTICLE 14 - Review of Judgement

The Sentencing State alone shall have the right to decide on any application for review of the judgment.

ARTICLE 15 - Termination of Enforcement

The Administering State shall terminate enforcement of the sentence as soon as it is informed by the Sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 16 - Information on Enforcement

The Administering State shall provide information to the Sentencing State concerning the enforcement of the sentence :

- a. when it considers enforcement of the sentence to have been completed;
- b. if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or
- c. if the Sentencing State requests a special report.

[...]

ARTICLE 20 - Settlement of Disputes

Any dispute between the Parties concerning the interpretation or application of this Treaty shall be settled amicably and via negotiation through diplomatic channels.

ARTICLE 21 – Amendments

This Treaty may be amended at any time upon mutual agreement of the Parties in written form. Such an amendment shall enter into force in accordance with the same procedure as applicable for the entry into force of this Treaty.

ARTICLE 22 - Final Clauses

1. This Treaty is subject to ratification and shall come into force for an unlimited period thirty days after the exchange of the instruments of ratification through diplomatic channels.

2. This Treaty is also applicable to the enforcement of sentences passed before coming into force.

3. Without prejudice to current proceedings, either Party may denounce this Treaty at any time by sending written notice to the other Party through diplomatic channels. The denunciation shall come into effect one year from the date of receipt of this notice.

4. The termination of this Treaty shall not affect the transfer requests which have been submitted before its termination ».

Regarding the admissibility of the application for suspension

B.4. The application for suspension being subordinated to the action for annulment, the admissibility of the latter must be verified on review of the application for suspension.

In respect of the interest of the applicants

B.5. Article 142, subparagraph 3, of the Constitution and Article 2, subparagraph 1 and 2, of the special law of 6 January 1989 on the Constitutional Court requires any natural or legal person who introduces an action for annulment to justify an interest. Only those persons whose situation could be directly and adversely affected by the challenged instrument justify having the required interest; it follows that a class action is not admissible.

B.6. It is apparent from the judgment which has become final and which was handed down on 4 February 2021 by the criminal court of Antwerp, and which is produced by the applicants, that the latter have introduced a civil action against Assaddollah Assadi, a person of Iranian nationality who, by this judgment, was definitively sentenced to a custodial sentence of twenty years and to moral damages for the harm caused to the applicants by the attempted terrorist attack he committed.

The first ten applicants, who are natural persons, therefore have the status of victim within the meaning of Article 2 (6) of the Law of 17 May 2006 « relative to the external legal status of persons sentenced to a custodial sentence and to the rights recognised to the victim in the context of the methods of enforcement of the sentence » (hereinafter : the law of 17 May 2006).

B.7.1. The victim, within the meaning of this law, must be informed when the convicted person in question is granted an initial exit authorisation from prison, granted in order to prepare for his/her social reintegration during the two years preceding the date he/she is eligible for conditional release, an initial prison leave or placement in a halfway house and, where appropriate, the conditions for such granting which have been set in the interests of the victim (Article 10 (2), subparagraph 4, of the law of 17 May 2006, as amended by Article 43 of the law of 30 July 2022 « aimed at administering more humane, speedier and firmer justice II »).

The same victim must also be informed if an interruption of enforcement of the penalty is granted (Article 17 (2), subparagraph 2, of the law of 17 May 2006) as well as the release of the convicted prisoner which is motivated by the fact that the latter has served his full sentence (Article 20/2 of the law of 17 May 2006, inserted by Article 12 of the law of 15 December 2013 « on various provisions with a view to improving the status of the victim in respect of the methods of enforcement of the penalty »).

B.7.2. Furthermore, an exit authorisation, prison leave, placement in a halfway house or interruption of enforcement of the penalty cannot be granted, by the minister or his/her deputy, without taking into account the risk that the convicted person may harass his/her victim (Articles 5 (2), 7 (2) and 16 of the law of 17 May 2006; Article 9/3, 1 (3), of the same law, as inserted by Article 71 of the law of 11 July 2018 « on various provisions in criminal matters »).

B.7.3. Before granting a person convicted to a custodial sentence of twenty years a measure of « limited detention », « electronic tagging » or « conditional release », the sentence implementation court must also take into account the « risk that the convicted person may harass the victims », the « attitude of the convicted person with regard to victims of the offences that resulted in his/her conviction » and the « efforts made by the convicted person to compensate the victim, given the means of the convicted person as such has changed by his/her own doing since the perpetration of the facts for which he/she was convicted » (Article 47 (1), (3), (4) and (6) of the law of 17 May 2006, as amended by Article 159 (1) of the law of 5 February 2016 « amending the criminal law and the criminal procedure and on various provisions in matters involving justice »).

Any decision for « provisional release with a view to expulsion or release » cannot be taken by this court without taking into account the « risk that the convicted person may harass the victims » and the « efforts made by the convicted person to compensate the victims » (Article 47 (2), (3) and (4) of the law of 17 May 2006).

The victim has the right to be heard by the sentence implementation court with regard to « special conditions » which, « in his/her interest », must accompany the measures cited above. He/she may put forward his/her observations, among others, on the conditions that the Public Prosecutor and, where appropriate, the competent official from the prison service have previously formulated in the interests of the victim (Article 53, subparagraphs 2 and 3, of the law of 17 May 2006, as amended by Article 18 of the law of 15 December 2013 « on various provisions with a view to improving the status of the victim in respect of the methods of enforcement of the penalty »).

B.8.1. The treaty of 11 March 2022 allows the Government to grant the transfer of a person of Iranian nationality who is detained in Belgium after having been convicted by a Belgian court (*Doc. parl.*, Chamber, 2021-2022, DOC 55-2784/003, p. 10), under the conditions set forth in this treaty, as well as in the law of 23 May 1990.

If such a transfer takes place, the enforcement of the conviction of that person will be governed by Iranian law and Iran alone shall be competent to take all the appropriate decisions (Article 11.2 of the treaty of 11 March 2022). The law of 17 May 2006, which determines the methods of enforcement of custodial sentences, shall therefore no longer be applicable, so that

the applicants can no longer invoke the above cited rights recognised by this law, or benefit from the rules established in their interest set forth by this law.

B.8.2. None of the parties before the Court indicate that Iranian law grants similar rights to victims or contains similar rules of protection.

B.9. It appears, therefore, at this stage of the proceedings, that the assent to the treaty of 11 March 2022 by Article 5 of the law of 30 July 2022 could directly and unfavourably affect the situation of the first ten applicants.

Their interest in requesting the annulment - and therefore the suspension - of this legislative provision is therefore established.

B.10. It is not necessary to review the interest of the eleventh applicant.

In respect of the interest of Olivier Vandecasteele in intervening in the proceedings

B.11.1. Anyone who shows that his/her situation may be directly affected by the judgment that the Court is called to pronounce with regard to the request for suspension justifies an interest in intervening in the proceedings.

B.11.2. Olivier Vandecasteele, a Belgian national who has been detained in Iran since February 2022 for a reason unknown to both him and to the Belgian authorities, is claiming, without being contradicted on this point by the applicants or by the Council of Ministers, that the suspension of the challenged law could have a direct and unfavourable effect on his current situation. He therefore has an interest in intervening in the suspension proceedings.

Regarding the fulfilment of the suspension conditions

B.12. Under Article 20 (1) of the special law of 6 January 1989, two conditions must be met for suspension to be decided :

- serious grounds must be invoked;
- the immediate application of the challenged rule must risk causing serious harm which would be difficult to remedy.

In respect of the existence of a serious ground

B.13. A ground is only serious within the meaning of Article 20 (1) of the special law of 6 January 1989 if it appears to have a basis after an initial review of the information available to the Court at this stage of the proceedings.

B.14. When it is reviewing the content of a treaty, the Court takes into account the fact that it is not a unilateral act of sovereignty, but a conventional norm by which Belgium has made a commitment to international law with regard to at least one other State.

B.15. In this case, the first ground is in particular based on the violation of Articles 10 and 11 of the Constitution, read in combination with Article 2 of the European Convention on Human Rights.

The developments of this ground show that the applicants are pleading that, insofar as it authorises the Belgian Government to transfer to Iran a person convicted by the courts and tribunals of having committed, with the support of Iran, a terrorist offence which endangered the lives of other people, Article 5 of the law of 30 July 2022 violates the right to life of these people.

B.16.1. Article 2, paragraph 1, of the European Convention on Human Rights provides :

« Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law ».

B.16.2. Everyone's right to life is one of the basic values of the democratic States making up the Council of Europe. This right requires each State to take appropriate steps to safeguard the lives of those within its jurisdiction (ECHR, Grand Chamber, 31 January 2019, *Fernandes*

de Oliveira v. Portugal, No. 104; 26 May 2020, *Makuchyan and Minasyan v. Azerbaijan and Hungary*, Nos. 109-110). This protection requirement is especially valid with regard to people who have been faced with an imminent risk to their life, even if they have not been injured (ECHR, 26 May 2020, *Makuchyan and Minasyan v. Azerbaijan and Hungary*, Nos. 89-94) and also implies that the competent authority carries out an effective investigation in the case of a potential violation of the right to life (ECHR, Grand Chamber, 26 May 2014, *Marguš v. Croatia*, Nos. 125 and 127; 26 May 2020, *Makuchyan and Minasyan v. Azerbaijan and Hungary*, No. 154).

B.16.3. The requirement of effectiveness of the criminal investigation under Article 2 of the European Convention on Human Rights can be also interpreted as imposing a duty on States to execute their final judgments without undue delay. It is so since the enforcement of a sentence imposed in the context of the right to life must be regarded as an integral part of the procedural obligation of the State under this Article (ECHR, 13 October 2016, *Kitanovska Stanojkovic and others v. the former Yugoslav Republic of Macedonia*, No. 32).

When the person who is sentenced to this penalty is not a national of that State and that State agrees that this person may be transferred to his/her country of origin to serve his/her prison sentence there, in execution of an international treaty which binds the two States, the Sentencing State must protect, in the context of the transfer procedure, the right to life of the people who are affected by the offence committed (ECHR, 26 May 2020, *Makuchyan and Minasyan v. Azerbaijan and Hungary*, Nos. 195-197).

When an agent of a State is convicted of a crime which violates the right to life, the subsequent granting of an amnesty or pardon could scarcely be said to serve the purpose of an adequate punishment. On the contrary, States are to be all the more stringent when punishing their own agents for the commission of serious life-endangering crimes. In such situations, what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State's duty to combat the sense of impunity the offenders may consider themselves to enjoy by virtue of their very office (ECHR, 26 May 2020, *Makuchyan and Minasyan v. Azerbaijan and Hungary*, No. 157).

B.17. Under Article 2, e), of Resolution No. 1373 adopted on 28 September 2001 by the United Nations Security Council, all States must « ensure that any person who participates in

the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts ».

This obligation arises among others from the finding that « any act of international terrorism, constitutes [...] a threat to international peace and security » (Preamble of Resolution 1373).

B.18.1. In application of the treaty of 11 March 2022, the State where a person has been sentenced (« the Sentencing State ») may transfer the latter to the other State (« Administering State ») « in order to serve his/her sentence ». It is « to serve the remainder of the sentence imposed on him/her » that the person sentenced on the territory of the Sentencing State may be transferred to the territory of the Administering State (Articles 1.3, 1.4 and 3.2 of the treaty of 11 March 2022).

This treaty specifies that the competent authorities of the Administering State « shall continue the enforcement of the sentence » (Article 11.1), that this State is in principle « bound by the legal nature and duration of the sentence arising from the conviction » (Article 12.1), and that any adjustment of this sentence must « as far as possible » correspond to the sentence imposed by the conviction to be enforced (Article 12.2). It is also apparent from this treaty that only the Sentencing State may revise the conviction judgment (Article 14).

B.18.2. The treaty of 11 March 2022 however confirms the right of the Administering State to grant the person transferred from the Sentencing State a pardon, amnesty or commutation of his/her sentence in accordance with its laws (Article 13).

B.18.3. It results from the foregoing that it cannot be excluded that a decision for pardon or amnesty by the Administering State effectively leads to the non-enforcement of this penalty.

B.19. Each transfer to Iran of a person sentenced in Belgium requires the express agreement of these two States (Articles 4.1, f), 6.2 and 7.2, of the treaty of 11 March 2022).

This transfer cannot take place unless that person has consented to it (Articles 4.1, d), 7.2, c), and 8 of the same treaty; Article 1, subparagraph 1 (3) and Articles 4 and 5 of the law of 23 May 1990).

B.20.1. During the preparatory works of the law of 30 July 2022, the competent minister declared that Iran had resorted to reprehensible « practices » such as abductions, « illegal detentions » or terrorist acts (*Doc. parl.*, Chamber, 2021-2022, DOC 55-2784/003, p. 12), that Iran is an « authoritarian and dictatorial regime » which has « no ethical or moral line », which « promotes terrorism » (*ibid.*, pp. 39-40, 50) and which is not a responsible member of the international community (*ibid.*, p. 54).

B.20.2. It is apparent from the applicants' file that, by a judgment of 4 February 2021, the criminal court of Antwerp convicted Assaddollah Assadi, a diplomatic official of Iranian nationality, of having committed, with other persons, a terrorist offence which endangered the life of others. It is apparent from this same court ruling that this person was arrested on 1 July 2018 in the context of the criminal investigation which led to this conviction. According to a judgment by the Court of Appeal of Antwerp of 10 May 2022, which also appears in the applicants' file, this convicted person withdrew the appeal that he had initially lodged against the judgment of 4 February 2021.

It is apparent both from this judgment and the judgment of 10 May 2022 that it was as an agent for the Iranian state intelligence and security services that this person committed the terrorist offence for which he was convicted.

Furthermore, by decision (CFSP) 2022/152 of 3 February 2022 « updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of the Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2021/1192 », the Council of the European Union registered Assaddollah Assadi on the list of persons involved in terrorist acts.

During the preparatory works for the law of 30 July 2022, the competent minister declared that, since the arrest of this diplomatic official, Iran exerted pressure on Belgium (*Doc. parl.*, Chamber, 2021-2022, DOC 55-2784/003, p. 53).

B.20.3. During the preparatory works of the law of 30 July 2022, the competent minister also declared that it was unlikely that persons of Iranian nationality who have been convicted and imprisoned in Belgium as a result of « general law crimes » would consent to a transfer to their State of origin (*ibid.*, p. 40).

B.21. In view of the foregoing, Belgium knows or should know that if, in execution of the treaty of 11 March 2022, Iran and Belgium agree to the transfer to the territory of the latter State of a person of Iranian nationality who has been convicted by the Belgian courts and tribunals of having committed a terrorist offence with the support of Iran, with a view to endangering the life of others, Iran will not effectively enforce this penalty, in application of Article 13 of this treaty.

B.22. After an initial review, insofar as it allows the transfer to Iran of a person who has been convicted by the courts and tribunals of having committed a terrorist offence with the support of Iran, the treaty of 11 March 2022 to which Article 5 of the law of 30 July 2022 grants assent seems to violate the right to life, as is recognised by Article 2 of the European Convention on Human Rights.

B.23. The first ground is serious.

In respect of the risk of serious harm which would be difficult to remedy that could be caused by the immediate application of the law

B.24.1. The suspension by the Court of a legislative provision must ensure that the immediate application of the latter does not cause serious harm to the applicant, which could not be remedied or which would be difficult to remedy in the case of annulment of that provision.

B.24.2. It is apparent from Article 22 of the special law of 6 January 1989 that, to satisfy the second condition set forth in B.12, the person who lodges a request for suspension must state, in his/her request, concrete and specific facts which sufficiently prove that the immediate application of the legislative provision, the annulment of which he/she is requesting, risks causing him/her serious harm which would be difficult to remedy.

This person must in particular demonstrate the existence of the risk of harm, its severity and its link to the application of the challenged legislative provisions.

B.25.1. As stated in B.6 and B.7, the first ten applicants have various rights and various safeguards in relation to the enforcement of the penalty regarding a person of Iranian nationality.

It is apparent from an initial review of the file that the latter person could fulfil the conditions for a transfer set forth in Article 4.1 of the treaty of 11 March 2022, to which Article 5 of the law of 30 July 2020 grants assent, as well as in Article 1 of the law of 23 May 1990.

B.25.2. As stated in B.8, the transfer of this person to Iran in application of the treaty of 11 March 2022 would have the effect of depriving these applicants of these rights and safeguards.

As stated in B.21 and B.22, the possibility of transferring a person to Iran who has been convicted by the courts and tribunals of having committed a terrorist offence with the support of Iran, with a view to endangering the life of other people moreover constitutes an infringement of the right to life of these people. The nature of this measure has the effect that this infringement cannot be remedied.

This loss and this infringement of the right to life would constitute, for them, a serious harm which would be difficult to remedy resulting from the application of said treaty, to which the challenged legislative provision grants assent.

B.26.1. Under Article 22.1 of the treaty of 11 March 2022, the latter will enter into force thirty days after « the exchange of instruments of ratification via diplomatic channels ».

B.26.2. Once the treaty of 11 March 2022 enters into force, the potential transfer of the person referred to in B.25.1 can only take place when all the steps of the procedure described by Articles 3 to 8 of this treaty, as well as by Articles 4 and 5 of the law of 23 May 1990, have been taken.

The Council of Ministers, on this subject, submitted to the Court a Ministerial circular « relative to the State transfer abroad of persons convicted in Belgium » signed in 2001 by the

Minister of Justice, which details the procedure to be followed by the competent Belgian authorities.

This treaty, this law and this circular do not allow the Court to assess with sufficient accuracy the time that would be needed for all the steps of a potential procedure for the transfer of the person referred to in B.25.1 to be taken.

B.26.3. It results from the foregoing that the person referred to in B.25.1 could be transferred to Iran in application of the treaty of 11 March 2022, to which Article 5 of the law of 30 July 2022 grants assent, before the Court has had the opportunity to rule on the action for annulment of this law.

It is therefore established that the immediate application of this law could cause the first ten applicants the harm described in B.25.2.

B.27. It should also be noted that neither the treaty of 11 March 2022, nor the law of 23 May 1990, nor any other law guarantees to the applicants that they will be informed of the existence and progress of a potential procedure for transfer to Iran of the person referred to in B.25.1 or of the existence of a Belgian decision in favour of such transfer, taken in application of this law.

The applicants in this case will therefore be unable to lodge an effective appeal against this decision, especially as the Council of State has already ruled, on several occasions, that it lacks jurisdiction to hear an appeal against a ministerial transfer decision taken in application of the law of 23 May 1990 (C.S., 14 June 2010, No. 205.129; 12 January 2012, No. 217.205; 14 August 2014, No. 228.202; 25 October 2016, No. 236.252).

B.28. The risk of serious harm which would be difficult to remedy that could be caused by the immediate application of the treaty of 11 March 2022, to which Article 5 of the law of 30 July 2022 grants assent, is established.

Regarding the scope of the suspension

B.29. The provisions of an international treaty form an indissociable whole.

Assent to an international treaty is an indivisible act by which the legislative power indicates its agreement to all the provisions of this treaty.

Insofar as the Court considers, for the reasons indicated in B.15 to B.22, that the first ground is serious, and that the proof of a risk of serious harm which would be difficult to remedy is provided, it is appropriate to suspend Article 5 of the law of 30 July 2022 giving assent to the treaty of 11 March 2022, insofar as this treaty allows the transfer to Iran of a person who has been convicted by the courts and tribunals of having committed a terrorist offence with the support of Iran.

For these reasons,

the Court

suspends Article 5 of the law of 30 July 2022 « on the assent for the following international instruments : 1) the Convention between the Kingdom of Belgium and the Republic of India on mutual assistance in criminal matters, executed in Brussels on 16 September 2021, and 2) the Treaty between the Kingdom of Belgium and the United Arab Emirates on mutual assistance in criminal matters, executed in Abu Dhabi on 9 December 2021, and 3) the Treaty between the Kingdom of Belgium and the United Arab Emirates on extradition, executed in Abu Dhabi on 9 December 2021, and 4) the Treaty between the Kingdom of Belgium and the Islamic Republic of Iran on the transfer of sentenced persons, executed in Brussels on 11 March 2022, and 5) the Protocol of 22 November 2017 amending the Additional Protocol to the Convention on the transfer of sentenced persons, signed on 7 April 2022 in Strasbourg », in that the treaty of 11 May 2022 allows the transfer to Iran of a person who has been convicted by the courts and tribunals of having committed a terrorist offence with the support of Iran.

Thus handed down in French, in Dutch and in German, in accordance with Article 65 of the special law of 6 January 1989 on the Constitutional Court, on 8 December 2022.

The Clerk of the Court,

The Presiding Judge,

(sgd.) F. Meersschaut

(sgd.) P. Nihoul