

Forcible and illegal deportation attempt of a Czech citizen

An investigation by the Brussels-based NGO Human Rights Without Frontiers Int'l (1)

HRWF (22.02.2016) - For ten months, Czech citizen **Jaroslav Dobes**, the leader of the spiritual movement Guru Jara, has been detained in the Camp Bagong Diwa immigration facility (Philippines) along with one of his followers, **Barbora Plaskova**. In June 2015, Dobes was victim of an attempt of forcible deportation even though there is no bilateral agreement on mutual extradition between Prague and Manila. Both had arrived in the Philippines several years ago and had since then run a spiritual retreat center without any problem with the local authorities. They had no criminal record in the Philippines.

Since March 2015, Jaroslav Dobes, a father of a three-year old daughter by a Filipina mother, and Barbora Plaskova, a nursing mother of a one-year old boy, have been detained by the local immigration services on the grounds of a questionable search warrant issued by the Czech authorities. The two Czech citizens repeatedly applied to be released on bail, but to no avail.

On the evening of 10th June 2015, there was an attempt to forcibly deport Jaroslav Dobes back to the Czech Republic on a Turkish Airlines flight without any legal basis. The tentative extraction failed, Dobes was handcuffed and later collapsed at the airport, forcing authorities to send him to the local medical facilities. His plane ticket had been purchased in Prague on 4th June, six days before the attempted deportation.

Timeline of the events

Between 2000 and 2009, Jaroslav Dobes travelled extensively around the world, including in the Philippines where he stayed for the first time in 1999. He settled down there again together with Barbara Plaskova in autumn 2009.

In 2007 (end of March – April), Jaroslav Dobes and Barbora Plaskova left the Czech Republic because they were feeling persecuted by the authorities and an anti-cult movement. At that time, no charge had been filed against them but a few days after Dobes' departure, he was summoned by mail to appear at the Czech police station in order to be questioned for a preliminary investigation regarding accusations of "leading to a mistake" during a tantric treatment.

On 14 May 2007, Jaroslav Dobes was put on the Wanted List of the Czech police because they did not know his whereabouts. On 18 February 2009, Naia-based immigration authorities in the Philippines admitted Jaroslav Dobes.

In 2009, a campaign against Jaroslav Dobes and Barbora Plaskova was led by former lecturers of the spiritual movement with a Czech anti-sect movement. In the summer of the same year, the special police unit for combating organized crime and mafia (UOOZ) became involved in the case.

In October 2009, Barbora Plaskova was put on the Wanted List of the Czech police because they did not know her whereabouts and they wanted to hear her as a witness in another (slander) case against Jaroslav Dobes.

In 2010, the UOOZ investigation gained impetus. Dozens of students of the Poetrie spiritual school and former members alike were interrogated, and in October, massive police raids and house searches took place. At that time, the police found evidence that Jaroslav Dobes and Barbora Plaskova were living in the Philippines.

In January 2011, criminal charges of human trafficking were filed by the UOOZ against Jaroslav Dobes and Barbora Plaskova.

In January 2012, the Supreme State Attorney's Office rejected the charges of human trafficking put forward by the UOOZ and the case was transferred to the ordinary police in Zlin.

On 28 May 2012, the court in Zlin issued an international arrest warrant against Jaroslav Dobes and Barbora Plaskova for alleged multiple rapes committed between 2004 and 2007. This was the first ever official warrant issued for alleged rapes.

On 7 October 2014, Jaroslav Dobes and Barbora Plášková were convicted by the Regional Court in Brno, Zlin (Czech Republic) of committing multiple rapes. The accused Jaroslav Dobes himself was also found guilty of the offense of defamation. They were sentenced in absentia, respectively to 10 and 9.5 years of imprisonment with strict regime.

On 13 February 2015, the Embassy of the Czech Republic in Manila informed the Filipino authorities that they needed the cooperation of their police concerning "the case of two fugitives, including detailed police information about both of them and details about their stay at Philippines".

On 6 March 2015, the Embassy of the Czech Republic in Manila informed the Filipino authorities that:

Dobes and Plaskova are fugitives from the Czech Republic for multiple rapes

Dobes has no valid travel document at present

Plaskova's passport should be considered invalid and will be physically cancelled by the issuing authority upon its delivery

Dobes and Plaskova are undocumented aliens and their presence in the Philippines poses a risk to public interest (fugitive).

On 12 March 2015, the Bureau of Immigration (BI) in the Philippines issued a Summary Deportation Order against Jaroslav Dobes and Plaskova Barbora on the initiative of the Czech Republic authorities represented by Czech Embassy in Manila.

On 18 April 2015, Barbora Plaskova was arrested and detained at the Immigration Office in Manila, when she tried to extent her visa. Her valid passport was confiscated.

On 15 May 2015, Jaroslav Dobes was arrested around 7am in Dapa, Surigao del Norte and was taken to the Immigration Detention Center in Manila.

On 21 May 2015, the High Court of Olomouc (Czech Republic) issued a resolution ordering the cancellation of the decision of the Regional Court in Brno in its entirety and ordered the first instance court to make a new court

decision. The decision of the High Court stressed that the conviction (rendered in absentia in October 2014) showed gross paucity of evidence.

On 10 June 2015, there was an attempt to forcibly deport Jaroslav Dobes back to the Czech Republic with a Turkish Airlines flight without any legal basis. The tentative extraction failed as he collapsed at the airport and had to be sent to the local medical facilities.

Decision of the High Court of Olomouc to cancel the sentence to 10 and 9.5 years of imprisonment

On 21 May 2015, against the judgment of the Regional Court in Brno (branch in Zlin, dated 07 October 2014, ref. No. 68 T 1 / 2014-4688), the High Court in Olomouc heard in a closed session, the appeals of the following:

- Petr Drapak, the counsel of the accused Plášková Barbora, born on 01 September 1974, at that time of unknown residence or whereabouts,
- Michal Krčma, the counsel of the accused Jaroslav Dobes, born on 04 January 1971, at that time of unknown residence and whereabouts
- PhD. Ludmila Plášková, the mother of the accused Barbora Plášková,

After hearing the appeals, the High Court in Olomouc ruled that:

“According to § 258 section 1 letter b), c) of the Code of Criminal Procedure the judgment under appeal, based on the initiative of all filed appeals, is hereby annulled and revoked in its entirety.

According to § 259 section 1 of the Code of Criminal Procedure, the case is returned to the court of first instance, to make a new decision.”

The end of the court decision stated:

“In conclusion, there must be pointed out that with regard to information concerning the alleged detention of the defendants Jaroslav Dobes and Barbara Plášková in the Philippines and their subsequent placement in a detention facility, which appeared in the media, and which the Court of Appeal attempted to objectify (see information obtained from Department of Investigation of the Police Presidium of the Czech Police) it will be necessary that the court of first instance determines, whether in this criminal case continue conditions for holding the proceedings against the fugitive within the meaning of § 302 et seq. Code of Criminal Procedure.

In the present context the appellant court refers to the decision of the Supreme Court of the Czech Republic File No. 4 Tz 82/2002. In this decision, the Supreme Court expressed the opinion that *when the accused for some time in a foreign country cannot move freely, (is placed e.g. in custody or in prison), then it cannot be concluded that such a stay abroad represents avoiding criminal proceedings brought by the Czech authorities involved in criminal proceedings and during this period there cannot be held against the accused proceedings as against a fugitive under § 302 et seq. Code of Criminal Procedure.*

In the opinion of the court of appeal it will be particularly necessary for the court of first instance to objectify information on the alleged current restrictions on the freedom of both defendants by their detention and imprisonment in the Philippines. If this is proved, then in terms of the above decision of the Supreme Court it would not be possible to continue in proceedings against the said defendants Dobes and Plaskova as against fugitives, under the conditions of § 302 et seq. of the Code of Criminal Proceedings.

Nevertheless, in accordance with the legal opinion of the appellate court, the conditions for proceedings against the defendants as fugitives will be retained if it is proved, preferably by their authentic expression, they demonstrated they refused their deportation to the Czech Republic. In such a situation then the accused would apparently make efforts to avoid, by their stay abroad (even though there were restrictions on their freedom), criminal proceedings brought by the Czech authorities.

In the given context it should be noted that the Czech Republic and the Republic of the Philippines have no bilateral agreement on mutual extradition of persons against whom there is a criminal prosecution, as well as the two countries are not signatories to any multilateral treaty which would modify or regulate mutual extradition of persons against whom a criminal prosecution is brought. Both defendants may therefore only be possibly deported from the territory of the Republic of the Philippines, although it can happen upon the request of the competent authorities of the Czech Republic. However, if the defendants did not agree with their deportation, (where, as stated above, their statement must be obtained), then with such attitude they would apparently show their clear intention to stay abroad to avoid criminal proceedings held against them by Czech authorities involved in criminal proceedings. In this case, at least according to the legal opinion of the appellate court, nothing would prevent the regional court to execute against both defendants the proceedings as against the fugitives within the terms of § 302 et. Seq. of the Code of Criminal Procedure."

Opinion/ Statement of Dr Athanassios Pantazopoulos, legal expert: The accused should be released

On 6 November 2015, Dr Athanassios Pantazopoulos (1) issued a statement (2) about the case of Jaroslav Dobes and Plaskova Barbora:

"(...) The legal effect of the cancellation/annulment of the first instance court decision is that according to the major principle of 'presumption of innocence' the first decision has been abolished and cancelled as to guilt and as to punishment. Therefore, there is no primary conviction against the accused Jaroslav Dobeš and Barbora Plášková and for this reason the accused are presumed innocent up to the issuance of a new irrevocable and final decision.

The presumption of innocence guarantees the innocence of a person charged with a criminal offence until proved guilty according to law. Alongside international instruments, this principle is endorsed by Art. 6.2 of the ECHR and Art. 48.1 of the EU Charter of Fundamental Rights and provides a set of legal guarantees in criminal proceedings whose nature and purpose lay in the right to a fair trial. According to Art. 6.2 ECHR, the presumption of innocence applies to *everyone who has been charged* with a criminal offence, notably only to persons labelled as 'suspects' in the framework of a criminal proceeding. **This principle requires that the accused must be considered innocent and treated as not having committed any offence until the prosecuting**

authorities of a state adduce 'sufficient evidence to satisfy an independent and impartial tribunal that he is guilty'. (...)

The detention and its duration (almost 10 months) of the asylum seekers, taking into consideration the personal, health and family situation both of them could be contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe-**Article 5 – Right to liberty and security**. Moreover, the fact that the on 21 May, 2015 the High Court in Olomouc issued a resolution ordering according to section 258 par. 1 b) and c) of the Criminal Procedure Code **the cancellation of the decision of the Regional Court in Brno in its entirety should be taken very seriously into consideration and the release of the above mentioned persons should be ordered.**

The above mentioned Charge sheet dated March 10th 2015 issued by the special prosecutor Homer R. Arellano, according to which:

'on 6 March 2015, the Embassy of the Czech Republic, Manila, through Jakub Cerny, Third Secretary and Consul informed the BI that: (1) Dobes and Plaskova are fugitives from Czech Republic for multiple rape; (2) Dobes has no valid travel document at present; and (3) Plaskova´s passport should be considered invalid and will be physically canceled by the issuing authority upon its deliver'.

does not reflect reality, is not true, because as mentioned above **the High Court in Olomouc cancelled the aforementioned decision of the first instance court in Brno.**

Therefore, any further detention is a violation of fundamental freedoms and human rights as further discussed above. Both asylum seekers Dobes and Plaskova are not a risk to public interest. For this reason the Embassy of the Czech Republic, Manila, through Jakub Cerny, Third Secretary and Consul should inform and update the BI and also withdraw the accusations as described in the charge sheet so as to restore the truth and in that way to respect the rules of international law, as outlined in this statement."

- (1) Dr Athanassios Pantazopoulos qualified as an Attorney in 1993 and have worked in various countries (Germany, Greece and Czech Republic) as a practitioner and lecturer in the field of Criminal Law. He is also an instructor/lecturer at the University of New York in Prague (courses European and International Criminal Law). He has been self-employed Attorney in the Czech Republic since 2002. His Law Firm is located in Prague, Czech Republic. He is registered with the Czech Bar Association and my registration number is 90260.
- (2) HRWF is in possession of the full analysis of Dr Athanassios Pantazopoulos.