

## **Jaroslav Dobes and Barbora Plaskova presumed innocent should not be extradited from the Philippines**

- **Presumption of innocence ignored**
- **Request for release still denied**

HRWF (07.03.2016) – Czech citizen Jaroslav Dobes, the leader of the spiritual movement Guru Jara, and Barbora Plaskova, one of his followers, who have been detained for ten months in the Camp Bagong Diwa immigration facility (Philippines), should be released and should not be deported to the Czech Republic, according to a report dated 26<sup>th</sup> February 2016 by the legal expert Dr Athanassios Pantazopoulos whose law firm is located in Prague.

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 have repeatedly applied to be released on bail from the Filipino immigration detention center, but to no avail. Both Czech nationals have been living for several years in the Philippines and have never been prosecuted in their country of residence.

On 7<sup>th</sup> October 2014, Jaroslav Dobes and Barbora Plásková were convicted by the Regional Court in Brno, Zlin (Czech Republic) of committing multiple rapes. They were sentenced in absentia, respectively to 10 and 9.5 years of imprisonment with strict regime.

On 21<sup>th</sup> 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.

### ***Presumption of innocence***

The legal effect of the cancellation 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 the guilt and as to the punishment. Therefore, there is no primary conviction against the accused Jaroslav Dobes and Barbora Plaskova and for this reason the accused are presumed innocent up to the issuance of a new irrevocable decision.

The presumption of innocence guarantees the innocence of a person charged with a criminal offence until proved guilty, according to the 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 purposes lay in the right to a fair trial.

The Czech Republic is a party both European instruments which explicitly say:

Article 6.2 of the ECHR: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

Article 48.1 of the EU Charter: "Everyone who has been charged shall be presumed innocent until proved guilty according to law."

In his report, Dr Athanassios Pantazopoulos, who was a practitioner in the fields of criminal law and human rights in Germany, Greece and now in the Czech Republic, writes:

According to Art. 6.2 of the ECHR, the presumption of innocence applies to everyone who has been charged with a criminal offence, notably 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 presumption of innocence is an evidence-based safeguard whose highest expression is given by the provision *until proved guilty*. The significance of this principle within a certain legal system is highly dependent on the standard of proof required to reach a guilty verdict. Although the ECHR does not define this standard, it is widely recognized as being very demanding in order to guard against wrongful and illegitimate convictions. The prosecution must prove that the accused is guilty 'beyond reasonable doubt' and any doubt should benefit the accused. The burden of proof is on the state that, through the prosecuting authorities, must satisfy this standard before addressing culpability.

### **Request for release**

The lawyers of the two Czech citizens have been fighting for their release, arguing in a document dated 9<sup>th</sup> September 2015 and addressed to the Refugees and Stateless Persons Protection Unit of the Department of Justice in Manila, that

"In the instant case, there is nothing on record that will show that the applicants' release on bail or stay in the country would pose a threat to public order, health or security.

"As borne out on evidence, except for the trump up charges recently dismissed on appeal by the High Court of Olomouc, the applicants have no other derogatory record in the Czech Republic and even in other countries where they have resided prior to their stay in the Philippines.

"In addition, the applicants have had no derogatory record during their entire stay in the Philippines since 2009.

There is no reason to keep both Czech citizens in prison, according to their lawyers. Moreover, the general detention conditions in Camp Bagong Diwa immigration facility are appalling and have been denounced by human rights organizations and former prisoners.

An article titled "*The Forgotten: Life inside notorious Philippine detention centre where inmates 'disappear' without being charged*" and published by the Post Magazine in August 2015, a former prisoner claimed that there were some 150 or so foreigners held in the detention center at that time, and were known as *The Forgotten*. Many of them have been locked up for years or decades in foggy, slow legal procedures.

One former detainee reported,

"You see people there who have been inside for seven, 11, or 14 years. When you talk to them, you discover they have never faced a criminal charge.

The centre is situated in the middle of the Manila police headquarters, with 2,000 officers housed in blocks surrounding it and a firing range outside the entrance.

"The firing goes on day and night - you hear bullets and guns going off constantly," says Spanoudis, 51, who was later cleared of involvement in an alleged cocaine smuggling plot in the US and who now runs a website and a Facebook page called Foreigners for Justice, aimed at exposing corruption in the Philippine judicial system. "Bullets sometimes ricochet off and land inside the centre. You get no peace and it's very unsettling."

It is in such an environment that Jaroslav Dobes and Barbora Plaskova have been detained for ten months.