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**REPORT OF  
LEGAL EXPERT**

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**Author of report: Dr. Athanassios Pantazopoulos, LL.M**

**Date of report: 30<sup>th</sup> of March 2016**

**Qualifications and experience of the author.**

*1. I qualified as an Attorney in 1993 and have worked in various countries (Germany, Greece and Czech Republic) as a practitioner in the fields of Criminal Law and Human Rights. I am also an instructor at the University of New York in Prague (courses European and International Criminal Law).*

*2. I have been self employed Attorney in the Czech Republic since 2002. My Law Firm is located in Prague, Czech Republic.*

*3. I am registered with the Czech Bar Association and my registration number is 90260.*

I am instructed as an expert by a request made to report on the Joint Decision of the Department of Justice, dated December 15<sup>th</sup>, 2015 and also the following matters/incidents as stated below and I have been asked to give my opinion if this (these) incident(s) constitute a violation of European and International Law:

December 15<sup>th</sup>, 2015 the Department of Justice issued a Joint Decision rejecting the Motion for Reconsideration and the Motion for Bail (release) for lack of merit, stating that Mr. Jaroslav Dobes, Ms. Barbora Plaskova and her minor son Bono Plasek are not refugees and ordered the deportation procedure to be continued.

Since April and May 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. According to materials and factual information related to the arrest, detention and further treatment of Mr. Jaroslav Dobes and Ms. Barbora Plaskova and opinion/answer to inquiries of their legal representatives/attorneys (Libra Law-Glenn Mendoza), dated October 27<sup>th</sup>, 2015 and the provided Affidavits as mentioned below, Jaroslav Dobes was forcibly abducted (attempt) in the evening of June 10, 2015, handcuffed and taken to the airport for transport to Prague, Czech Republic via Turkish Airline. As revealed in the Turkish Airline record, the plane ticket for passenger Jaroslav Dobes was purchased in Prague on June 4, 2015, or six days before the illegal deportation attempt on June 10, 2015, or even before the DOJ (Department of Justice) and RSPPU (Refugees and Stateless Persons Protection Unit) could resolve his application for refugee status. With the deportation attempt carried out without any valid authority, there is every reason for applicants to fear for their lives and safety if deported to the Czech Republic. If only for this, there is also every reason for the DOJ (Department of Justice) to afford protection to the applicants, the fear of persecution being real, well-founded and fully justified. Jaroslav Dobes also describes how due to immense fear of the situation, the stress and lack of proper nutrition caused by almost a month detention, he collapsed at the airport terminal. Further evidences of this incident are included in the attached affidavits, several reports of Embassy of the Czech Republic and attorney's letter, as mentioned below.

## **Legal Acts, material I have relied upon in making this report**

- **Joint Decision of the Department of Justice, dated December 15<sup>th</sup>, 2015 with all attached documents, as stated below:**
  - a) Decision of the High Court of Olomouc dated 23. May 2015, reversing and nullifying the judgment of conviction issued by the regional court of Zlin against Jaroslav Dobes and Barbora Plaskova for alleged multiple crimes of rapes and one count of defamation;
  - b) Compilation of 62 Testimonies on Guru Jara and the Persecution of the Spiritual Group („The Path of Guru Jara“), all duly notarized, officially translated in the English Language and verified by Tomas Binder, a duty appointed interpreter by a regional court in the Czech Republic and duly registered unde File No. 2015/162;
  - c) Documentary of Persecution of Religious Movements in Czech Republic, prepared by Filip Manek, PhD;
  - d) Amicus Brief („Letter of Support“) issued by Lucie Rybova, MA, Director of Czech Helsinki Committee, attesting and confirming the persecutions and discrimination suffered by members of the Guru Jara Spiritual Group from the Czech police authorities;
  - e) Sworn Statements executed in the Philippines by foreign nationals Kristyna Tomanova, Eva Drietomska, Lenka Cumplova, Martina Bartova, Ivana Stedra, Sara Handlova, and Erina Tsuzuki, all members of the spiritual group, attesting to the persecution suffered in the Czech Republic by members of the spiritual group and its leadrs Jaroslav Dobes („Guru Jara“) and Barbora Plaskova, including their exile and continuing spiritual activities in Siargao, Philippines;
  - f) Affidavit of Michalle Humaylab, the Filipino mother of the 3-year od daughter of Jaroslav Dobes („Guru Jara“), attesting to Mr. Dobes and Barbora Plaskova’s life in the Philippines, their moral character ad integrity, warm acceptance by the local community, afforts and developing a spiritual sanctuary in Brgy. Union known as Paradise, all duly supported by certifications and manifesto issued by local residents and officials;
  - g) Supplemented Declarations („Affidavits“) of Jaroslav Dobes („Guru“) and Barbora Plaskova infolving the cited to June 2015 incident of foreible abduction and aborted illegal extraction to the Czech Republic, duly upperted by Affidavits

- of witnesses Marichona E. Siron and Edfer Q. Dandoy and other vital documents, including Turkish Airlines ticket of Jaroslav Dobes scheduled on 10 June 2015, 20:50, to Prague via Istanbul;
- h) Report of Legal Expert dated 31 August 2015 issued by Dr. Athanassios Pantazopoulos, LL.M;
  - i) Statement dated 18 August 2015 issued by Paul Eybert, Senator of Parliament Czech Republic;
  - j) Letter (dated 26 August 2015) by Bernard Kerblat, UNHCR Philippines, to the counsel of Dobes and Plaskova, formally endorsing copies of *Guidelines on International Protection: Religious Based claims under Article 1A(2) of the 1951 Convention and its 1967 Protocol Relating to the Status of Refugees and Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*;
  - k) Letter of Support dated 2 September 2015 issued by Soteria International (Spiritual Human Rights) based in Denmark;
  - l) Certification dated 3 September 2015 issued by Alex Rey T. Espolita, Shargao Tourism Office; and
  - m) Letter of Support/Recognition dated 8 September 2015 issued by Chris Estrella, Station Officer Cebu Pacific Airline.
  - n) Certification dated 3 September 2015 issued by Alex Rey T. Espolita, Shargao Tourism Office; and
  - o) Letter of Support/Recognition dated 8 September 2015 issued by Chris Estrella, Station Officer Cebu Pacific Airline.
- **Materials related to the arrest and detention of the above mentioned persons and opinion/answer to inquiries of their legal representatives/attorneys, dated October 27th, 2015.**
  - **Affidavit by Jaroslav Dobes, dated July 31<sup>st</sup>, 2015**
  - **Affidavit by Barbora Plaskova, dated July 31<sup>st</sup>, 2015**
  - **Affidavit by Marichona E. Siron, dated July 30<sup>th</sup>, 2015**
  - **Letter from Libra Law-Glenn Mendoza, dated December 28<sup>th</sup>, 2015 with the following attachments:**
  - **Report of Embassy of the Czech Republic, dated February 13<sup>th</sup>, 2015**
  - **Report of Embassy of the Czech Republic, dated March 5<sup>th</sup>, 2015**
  - **Report of Embassy of the Czech Republic, dated May 6<sup>th</sup>, 2015**

- **Report of Ministry of Foreign Affairs, dated February 12<sup>th</sup>, 2016**
- **Additional report of SOTERIA INTERNATIONAL, dated February 24<sup>th</sup>, 2016**
- **Newsletter "Human Rights in the World" from Human Rights Without Frontiers International- PHILIPPINES-CZECH REPUBLIC: Forcible and illegal deportation attempt of a Czech citizen, dated February 22nd, 2016**

#### **Legal Acts:**

**Article 9 of the European Convention on Human Rights** provides a right to freedom of thought, conscience and religion. This includes the freedom to change a religion or belief, and to manifest a religion or belief in worship, teaching, practice and observance, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society"

#### **Article 9 – Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

#### **1. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

2012/C 326/02

##### *Article 1*

#### **Human dignity**

Human dignity is inviolable. It must be respected and protected.

##### *Article 4*

#### **Prohibition of torture and inhuman or degrading treatment or punishment**

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

##### *Article 6*

#### **Right to liberty and security**

Everyone has the right to liberty and security of person.

*Article 7*

**Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

*Article 10*

**Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

*Article 21*

**Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

*Article 22*

**Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

*Article 47*

**Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

*Article 48*

**Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

2. **Universal Declaration of Human Rights** states that **"no one shall be subjected to arbitrary arrest, detention or exile"**. The International Covenant on Civil and Political Rights 1966, solemnly provides in Article 9(1) that "everyone has the right to liberty and security of person. **No one shall be subjected to arbitrary arrest or detention"**.
3. The Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe says (art. 6.2): **"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law"**.
4. Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe says (art. 3) **„No one shall be subjected to torture or to inhuman or degrading treatment or punishment“**.
5. Universal Declaration of Human Rights, article 11, states: **"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."**

## Opinion

Taking into consideration the Joint Decision of the Department of Justice rejecting the Motion for Reconsideration and the Motion for Bail (release) for lack of merit, stating that Mr. Jaroslav Dobes, Ms. Barbora Plaskova and her minor son Bono Plasek are not refugees and ordered the deportation procedure to be continued and the factual information/reports provided to me by the legal representatives/Attorneys (LIBRA LAW- Dr. Glenn Mendoza) of Jaroslav Dobes and Barbora Plaskova related to the arrest and detention of Jaroslav Dobes and Barbora Plaskova and the attempt of forcible and illegal abduction of Jaroslav Dobes to the Czech Republic and the opinion/answer to inquiries of their legal representatives/attorneys (Libra Law-Glenn Mendoza), dated October 27th, 2015 and the Affidavits as mentioned above of Jaroslav Dobes, Barbora Plaskova and Marichona E. Siron, where they state and confirm that Jaroslav Dobes was forcibly abducted in the evening of June 10, 2015, handcuffed and taken to the airport for transport to Prague, Czech Republic via Turkish Airline. As revealed in the Turkish Airline record, the plane ticket for passenger Jaroslav Dobes was purchased in Prague on June 4, 2015, or six days before the illegal deportation attempt on June 10, 2015, or

even before the DOJ (Department of Justice) could resolve the application for his refugee status. With the deportation attempt carried out without any valid authority, there is every reason for applicants to fear for their lives and safety if deported to the Czech Republic. If only for this, there is also every reason for the DOJ (Department of Justice) to afford protection to the applicants, the fear of persecution being real, well-founded and fully justified. The same incident verifies in his Affidavit in front of the notary public, dated July 31<sup>st</sup> 2015, Jaroslav Dobes and states in a very detailed description how the *“Czech authorities involved have violated the International Law and the principles governing refugees and disrespected the authority of the RSPPU (Refugees and Stateless Persons Protection Unit) and the Honourable Secretary of Justice because the attempt of illegal deportation was conducted pending resolution of his request for recognition of the refugees status”*. He also describes how due to immense fear of the situation, the stress and lack of proper nutrition caused by almost a month detention, he collapsed at the airport terminal. The same incident verifies also Barbora Plaskova, who provides also in her Affidavit, in front of the Notary Public dated July 31<sup>st</sup> 2015, evidences of the issued tickets (under point 12 of the Affidavit). *“She claims that the abduction and attempted deportation dated June 10<sup>th</sup>, 2015 is a serious manifestation of the Czech government’s involvement and grave intention to persecute us”*. Furthermore, this incident is also confirmed by Marichona E. Siron in her Affidavit in front of the Notary Public, dated July 30<sup>th</sup>, 2015. *She also provides evidences (under point 16 of the Affidavit) of the issued tickets under the name of Jaroslav Dobes for scheduled flight on June 10<sup>th</sup>, 2015 at 08.50 P.M. from Manila-Istanbul-Prague*. Furthermore, I took also into consideration the reports of the Administrative authority - VV Manila (Czech Consulate in Manila), provided to me by the legal representatives/Attorneys (LIBRA LAW- Dr. Glenn Mendoza) of Jaroslav Dobes and Barbora Plaskova and the answer of the Ministry of Foreign Affairs of Czech Republic. I have been also requested to give my opinion on whether the Czech Authorities have provided the necessary protection to the above mentioned Czech citizens and if their attitude and information to the Philippine Authorities were impartial, accurate, complete and objective.

According to the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe says (art. 6.2): **"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law"**.

According to the Universal Declaration of Human Rights, article 11, states: **"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."**

According to the **CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION Art. 48 Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

It is obvious the lack of protection on the part of the Czech consular authority, which on the one hand says (report, dated May 5<sup>th</sup>, 2015) that ***„It is without any doubt that the Czech Republic is a free, open and democratic country, respecting principles of human rights, including the right for impartial jurisdiction and freedom of religion. The criminal charges against Ms. Plášková are not connected with her religious believe or linked with any illegal oppression beside the police or any other executive authority of the Czech Republic Her request for being recognized as a refugee is absolutely baseless and purposive.“*** but on the other hand mentions, in the same report to the Department of Justice of the Philippines, without objective and impartial judgment, as befits any Authority, representing the State that ***„As her criminal case was subject of general public awareness and related information about the procedure, including the sentence for Ms. Plášková to almost 10 years imprisonment, were broadly published in the media it is without any doubt that she was well aware about these and was intentionally hiding in the Philippines in order to escape the jurisdiction of her home country.“*** This reference is not objective and impartial, because does not content the crucial information, not even in a supplement, that **the judgment of the court of first instance was canceled in its entirety** by the High Court in Olomouc. The Administrative authority - VV Manila also refers to ***the criminal case as subject of general public awareness and to the image of the case, as presented by the media*** and does not provide objective, accurate, true and factual information and in that way demonstrates the bias of the administrative authority against Mr. Dobeš and Mrs. Plášková. This is in a democratic society, where the rule of law prevails, unacceptable! The Administrative authority - VV Manila should act

impartially and objectively without relying on the media but only on factual, accurate and objective information. Moreover, the Czech Ministry of Foreign Affairs in his answer, dated February 12<sup>th</sup>, 2016, supported the Czech Consulate in Manila and in that way did not respect the fundamental right of “**presumption of innocence**” and also the fundamental principle “**of objective, accurate, complete and impartial judgment**”.

Furthermore, according to the decision of the Department of Justice in Manila „*to our mind, mean that there is no judgement of acquittal with respect to the alleged multiple crimes of rape and that the case was returned to the court of first instance to try it again and rule on it. Therefore, the applicants are still subject to criminal prosecution before the proper court in the Czech Republic, which is part of according them due process, in addition to the fact that they are ably represented by counsel. Applicants must face to courts of justice in order to properly defend themselves. This Department will not allow individuals to use the system of refugee status determination in order to evade lawful prosecution of individuals under the guise of claiming to be refugees*“

The only objective and factual information is that according to Section 258 of the Czech Criminal Procedure Code:

/1/ The appellate court cancelled the challenged judgement among others

**b) for errors in the judgement especially for unclarity or incompleteness as to the establishment of the facts of the case or if the court did not settle all the circumstances important for the decision**

**c) if doubts arise as to the correctness of the establishment of the facts of the case, and evidence shall have to be taken again or new evidence shall be taken for the clarification of the case and their taking before the appellate court would mean substitution of first instance court work.**

For the above mentioned reasons the High Court in Olomouc canceled the aforementioned decision of the first instance court in Brno and ordered according to Section 259 par. 1 of the Czech Criminal Procedure Code the first instance court to try this case again and to make a new decision.

**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 canceled 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 decision.**

**This fact and fundamental principle of criminal law was not respected and taken into consideration by the Department of Justice.**

It has to be pointed out that 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 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.

Another incident and further relevant violation of rights, as described in the affidavits and the report of legal representatives/attorneys constitutes a breach of the right to liberty, which is firmly established in Article 9 of the ICCPR, as well as in other treaties (eg Article 5, ECHR):

***'everyone has the right to liberty and security of person. No one shall be arbitrarily deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.'***

Every time somebody is arrested is deprived of his/her liberty, but it is the arbitrariness of such deprivation which is the focus of this negative human rights obligation, which can be avoided if the arrest and detention are made 'on such grounds and in accordance with such procedures as are established by law'. In other words, the restriction of liberty is possible in certain circumstances dictated by law.

The extraterritorial seizure of an individual and his forcible abduction (or even attempt of such abduction) is an international problem, which raises two issues; the rights of a state and the rights of an individual. While these issues appear at first sight to be independent of each other, they are very much interconnected and far from simple to disentangle. Indeed, the rights of the individual rest to a real extent on the encroachment of the rights of the state in which they are located. In our case the attempt of forcible deportation/abduction of Jaroslav Dobes, pending his petition to the Refugees and Stateless Persons Protection Unit (RSPPU), constitutes a serious violation of his right to a fair trial (court hearing for his asylum status, effective remedies etc.), liberty and security. Jaroslav Dobes should not be arbitrarily deprived of his rights to a proper and fair asylum procedure.

The second argument is based on the proposition that forcible abduction (or attempt) carried out by a State (or officers of the State or with any involvement of state authorities) is a violation of international human rights law. In the above mentioned testimonies/affidavits it is stated that the ticket was purchased from Prague, Czech Republic on June 4<sup>th</sup>, 2015 and had a scheduled flight (Turkish Airlines) from Manila-Istanbul-Prague, Czech Republic on June 10<sup>th</sup>, 2015. This could indicate involvement of Czech Authorities in this incident. The Third Secretary and Consul of the Embassy of the Czech Republic refers to that in his letter/report to the Department of Justice in the Philippines, dated May 5<sup>th</sup>, 2015, namely he says: *“The fact that she is asking Department of Justice for recognition of a refugee status disables her deportation, which was originally planned for the coming week June 8-12, 2015”*. The Universal Declaration of Human Rights states that **"no one shall be subjected to arbitrary arrest, detention or exile"**. The International Covenant on Civil and Political Rights 1966, solemnly provides in Article 9(1) that **"everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention"**. The Human Rights Committee did hold in *Lopez* 's case (1981) that abduction of a Uruguayan refugee from Argentina by Uruguayan security and intelligence forces constituted a violation of Article 9 of the Covenant. It followed, the Committee held, that the State was under an obligation to provide effective remedies, including immediate release and permission to leave the country.

While the violation of a sovereign state's territory and the rights of an individual are two discrete legal issues, it is arguable that Article 9 makes a connection between the two. Indeed, an argument can be made that the 'law' referred to in this provision may be taken to mean *international* law. The consent of the territorial state, or indeed a valid claim of self-defense, does not necessarily mean that extraterritorial arrest (or attempt of such arrest and further deportation) and detention would be lawful, just that it is one factor to be considered. Indeed, there are other due process elements that would need to be satisfied. In the case of *al-Liby* (2013) can we say that the prescribed offence, the indictment, and then the warrants for his arrest satisfy the legal grounds and procedures as per Article 9 of the ICCPR? In other words, without the extraterritorial element involved would his arrest have been *prima facie* lawful? Possibly, but even then the US would need to have satisfied the procedural elements of a lawful arrest and detention. For example, we have not been made privy to whether *al-Liby* was informed of the reasons for his arrest and the charges against him, either at the time (see Article 9, ICCPR) or promptly afterwards (see Article 5, ECHR). In addition, anyone arrested on

criminal charges must be brought ‘promptly’ before a judge (see Article 9, ICCPR). ‘Promptly’ in this context has been interpreted as meaning the delay must not exceed a few days and certainly not more than a week (see *Ocalan v Turkey* (2005)), with al-Liby’s appearance in New York a week after his arrest seemingly satisfying this.

The US has, of course, continuously dismissed the extraterritorial application of international human rights law, but there is extensive practice to the contrary, even in the context of a non-international armed conflict. The UN Human Rights Committee, for example, made quite clear in *Lilian Celiberti de Casariego v Uruguay* (1984) that:

*Article 2(1) of the Covenant places an obligation upon a State party to respect and to ensure rights “to all individuals within its territory and subject to its jurisdiction”, but it does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it ... it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.*

The UN Human Rights Committee was clear on its position regarding extraterritorial application prior to the US ratifying, at which point the US then made no reservations along these lines. The decisive factor is not whether al-Liby was detained within the four walls of a US detention facility or ship (although cf. *Medvedyev v. France*), but whether he was under the direct control of US agents, which appears to be the case both at the time, or at least shortly after his arrest, and during his stay on the US navy ship.

### **The domestic distinction between means of apprehension and the exercise of jurisdiction**

Now that al-Liby is on the territory of the US, apprehending a suspect in a manner that – and some might say gravely – violates international law might pose problems in terms of a court of law permitting an individual to stand trial before it. However, states (and some international criminal tribunals) have often adopted a *male captus bene detentus* approach to such issues, drawing a clear distinction between the means of apprehension and the jurisdiction to prosecute. This is certainly the case in Israel, where the state’s infamous abduction of the Nazi Adolf Eichmann from Argentina did not prevent his trial from proceeding in a Jerusalem court in 1961.

Similarly, in the US, the ‘Ker-Frisbee doctrine’, which was developed in *Ker v. Illinois* (1886) and which holds that the fact that an individual was **brought into the jurisdiction of a court by unlawful means** does not automatically divest the court of jurisdiction, seems to have held its position as ‘good’ law. While the US Court of Appeals held in *US v Toscanino* (1974) that such a distinction should not be applied

where the presence of the defendant has been secured by force or fraud, subsequent cases have to an extent nullified this approach. For example, in *US ex rel. Lujan v. Gengler* (1975) it was noted that this approach was limited to circumstances in which ‘torture, brutality and similar outrageous conduct’ had taken place against the individual, none of which it appears al-Liby has subjected to. In *Sosa v Alvarez-Machain* (1992) the US Supreme Court held that even if there is an extradition treaty in place between the US and another state, abduction by the US would not necessarily be a bar to jurisdiction being exercised so long as the relevant treaty did not expressly preclude this as a means of apprehension. By contrast, in the UK, while it had been held in the 1980s that the court’s had no power to inquire into the circumstances with which an individual had been brought into the jurisdiction of the state concerned (*R v Plymouth Justices, ex parte Driver* (1986)) the House of Lords shortly afterwards held that where an extradition treaty existed between the UK and the state in which an accused was seized, ‘our courts will refuse to try him if he has been forcibly brought within our jurisdiction in disregard of those procedures by a process to which our own police, prosecuting or other executive authorities have been a knowing party’ (*R v Horseferry Road Magistrates’ Court, ex parte Bennett* (1993)). Consequently, while international law does not provide prescriptive rules on this issue, there is also no discernible rule of customary international law prohibiting the US putting al-Liby on trial, despite the arguably unlawful means of his initial arrest and detention.

It has been established that **abduction (or attempt of abduction) of a person from the territory of another State is a violation of international law and hence an internationally wrongful act**. The first obligation of a State responsible for the internationally wrongful act is to cease the wrongful act, if it is continuing and to offer appropriate assurances and guarantees of non-repetition. After that, the abducting State must make appropriate "reparation" to the offended State. Reparation may take the form of restitution, compensation and satisfaction, either singly or in combination.

Taking into consideration all above mentioned factual information, reports and case law the abduction attempt of Jaroslav Dobes from Manila to Prague, pending his asylum case and in violation of all legal deportation and extradition procedures, constitutes a severe violation/infracton of the above mentioned Conventions, Covenants and Treaties. Jaroslav Dobes also suffered immense fear of the situation, stress and due to lack of proper nutrition caused by almost a month detention, he collapsed at the airport terminal. This could amount to a violation of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe says „No one shall be subjected to torture or to inhuman or degrading treatment or punishment“.

These violations should have been also taken into consideration by the Department of Justice as an evidence of unfair, inhuman and degrading treatment of Mr. Jaroslav Dobes.

### **Right to freedom of religion as a pillar of democratic society**

According to the Joint Decision of Department of Justice:

*„In addition to the country of origin information that we have cited in the assailed Decisions, which shows that freedom of religion/belief of Czech national are upheld and respected and that neither the applicants nor their spiritual organization are being persecuted, the following information is material to show that the Czech Republic is generally upholding the freedom of religion of individuals.*

...

*Clearly, independent and credible information regarding religious freedom in the Czech Republic are respected and even supported by the Czech government save in cases wherein threats to „public safety and order, health and morals, or the rights and freedoms of others are already being violated. As with any other government, it has to intervene when the exercise of religious freedom already amounts to trampling on the rights of others or where alleged criminal violations already exists“.*

**The Department of Justice did not take into consideration the filed reports and other documentation providing enough evidence about the situation of freedom of religion in the Czech Republic. Moreover the DoJ ignored the fact that the Mr. Dobes and Ms. Plaskova face accusations and criminal proceedings in the Czech Republic, because of their beliefs and religion.**

**Freedom of thought, conscience and religion** is a fundamental right enshrined not only in the European Convention on Human Rights but also in many other national, international and European instruments. It is an essential right of considerable importance.

According to Article 9 of the Convention:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

3. Article 2 of Protocol No. 1 to the Convention concerns a particular aspect of freedom of religion, namely the right of parents to ensure the education of their children in conformity with their own religious convictions:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

In addition to the Convention, freedom of thought, conscience and religion is an inherent part of the fundamental rights laid down by the United Nations. Accordingly, under Article 18 of the International Covenant on Civil and Political Rights, everyone has the right to freedom of thought, conscience and religion. This right includes freedom to have or to adopt a religion or belief of his or her choice, and freedom, either individually or in community with others and in public or private, to manifest his or her religion or belief in worship, observance, practice and teaching. **No one can be subject to coercion which would impair his or her freedom to have or to adopt a religion or belief of his or her choice. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.** Further, Article 18 *in fine* specifies that **the States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. Article 26 of the Covenant lays down a general principle of non-discrimination, which concerns religion among other things.**

Freedom of thought, conscience and religion, enshrined in Article 9 of the Convention, is one of the foundations of a “*democratic society*” within the meaning of the Convention. In its religious dimension it is one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (*Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A, and *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I).

In a democratic society, in which several religions or branches of the same religion coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected. However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial. **What is at stake here is the preservation of pluralism and the proper functioning of democracy** (*Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, §§ 115-16, ECHR 2001-XII).

In this sensitive area involving the establishment of relations between the religious communities and the State, the latter in theory enjoys a wide margin of appreciation (*Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 84, ECHR 2000-VII). In order to determine the scope of the margin of appreciation the Court must take into account what is at stake, namely the need to maintain true religious pluralism, which is inherent in the concept of a democratic society. Moreover, in exercising its supervision, the Court must consider the interference complained of on the basis of the file as a whole (*Metropolitan Church of Bessarabia and Others*).

Most of the rights recognised under Article 9 are individual rights that cannot be challenged. However, some of these rights may have a collective aspect. **Accordingly, the Court has recognised that a Church or ecclesiastical body may, as such, exercise on behalf of its members the rights guaranteed by Article 9 of the Convention.**

As religious communities traditionally and universally exist in the form of organised structures, Article 9 has to be interpreted in the light of Article 11 of the Convention which safeguards associative life against unjustified State interference. **Seen in this perspective, the believer's right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention.** Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords (*Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI; *Metropolitan Church of Bessarabia and Others*, cited above, § 118; and *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, nos. 412/03 and 35677/04, § 103, 22 January 2009).

In accordance with that principle of autonomy, **the State is prohibited from obliging a religious community to admit new members or to exclude existing ones** (*Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 146, 14 June 2007).

Similarly, Article 9 of the Convention does not guarantee any right to dissent within a religious body; in the event of a disagreement over matters of doctrine or organisation between a religious community and one of its members, the individual's freedom of religion is exercised through his freedom to leave the community (*Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others*, cited above, § 137; *Karlsson v. Sweden*, no. 12356/86, decision of the Commission of 8 September 1988, DR 57, p. 172; *Spetz and Others v. Sweden*, no. 20402/92, decision of the Commission of 12 October 1994; and *Williamson v. the United Kingdom*, no 27008/95, decision of the Commission of 17 May 1995).

In their activities religious communities abide by rules which are often seen by followers as being of a divine origin. **Religious ceremonies have meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules.** The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a particular manifestation of one's religion, which is in itself protected by Article 9 of the Convention (*Hasan and Chaush*, cited above, *loc.cit.*, and *Perry v. Latvia*, no. 30273/03, § 55, 8 November 2007). **These principles should be also respected in this case, where Mr. Jaroslav Dobes represents the religious leader of Cesty Guru Járý religious society and the rules of this religious community are seen by followers as being of a divine origin.**

The Court further observes that, although the object of **Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities**, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition, but the applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the general interest and the individual interests; and in both contexts the State enjoys a certain margin of

appreciation (see *Evans v. the United Kingdom* [GC], no. 6339/05, §§ 75-76, ECHR 2007-I, and *Rommelfänger*, cited above; see also *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000).

The Court reiterates, moreover, that the margin of appreciation afforded to the State is wider where there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it. There will also usually be a wide margin if the State is required to strike a balance between competing private and public interests or different Convention rights (see *Evans*, cited above, § 77).

The Court reiterates that religious communities traditionally and universally exist in the form of organised structures and that, where the organisation of the religious community is at issue, **Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords.** The Court further observes that, but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, §§ 62 and 78, ECHR 2000-XI). Lastly, where questions concerning the relationship between State and religions are at stake, questions on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 109, ECHR 2005-XI).

The protection of freedom of thought, conscience and religion **implies corresponding neutrality on the part of the State.** Respect for different convictions or beliefs is a primary obligation of the State, which must accept that individuals may freely adopt convictions, and possibly subsequently change their minds, by taking care to avoid any interference in the exercise of the right guaranteed by Article 9. The right to freedom of religion excludes any assessment by the State of the legitimacy of religious beliefs or the means of their expression.

The Court has held that Article 9 of the Convention can hardly be conceived as being likely to diminish the role of a faith or a Church with which the population of a specific country has historically and culturally been associated (*Members of the Gldani*

*Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 132, 3 May 2007).

However, that does not mean that the relations between a Contracting State and religious communities lie completely outside the Court's scrutiny. In the case of *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (no. 40825/98, 31 July 2008), the Court found a violation of Article 9 of the Convention on account, among other things, of a ten-year waiting period imposed on "new" religious communities that already had legal personality before they could acquire the status of a "religious society" (*Religionsgesellschaft*) offering a number of substantive privileges, such as the right to teach religion in State schools. The Court held:

"92. ...Given the number of these privileges and their nature, ... the advantage obtained by religious societies is substantial and this special treatment undoubtedly facilitates a religious society's pursuance of its religious aims. In view of these substantive privileges accorded to religious societies, **the obligation under Article 9 of the Convention incumbent on the State's authorities to remain neutral** in the exercise of their powers in this domain requires therefore that if a State sets up a framework for conferring legal personality on religious groups to which a specific status is linked, **all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner.**"

#### ***Interference with rights under Article 9***

Under Article 9 § 2 of the Convention, any interference with the exercise of the right to freedom of religion must be "*necessary in a democratic society*". That means that it must correspond to a "*pressing social need*"; thus, the notion "*necessary*" does not have the flexibility of such expressions as "*useful*" or "*desirable*" (*Svyato-Mykhaylivska Parafiya*, cited above, § 116).

#### ***Duty of neutrality and impartiality of the State***

Save for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (*Hasan and Chaush*, cited above, § 78; *Metropolitan Church of Bessarabia and Others*, cited above, § 117; and *Serif v. Greece*, no. 38178/97, § 52, ECHR 1999-IX).

State action favouring one leader of a divided religious community or undertaken with the purpose of forcing the community to come together under a single leadership against its own wishes constitutes an interference with freedom of religion. In democratic

societies the State does not need to take measures to ensure that religious communities are brought under a unified leadership. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (*Hasan and Chaush*, cited above, § 78; *Metropolitan Church of Bessarabia and Others*, cited above, § 117; and *Serif*, cited above, § 52).

In the case of *Miroļubovs and Others v. Latvia* (no. 798/05, 15 September 2009), the Court examined the way in which the authorities of the respondent State had resolved an internal conflict within a religious community. It stated that, when examining whether a domestic measure complied with Article 9 § 2 of the Convention, it had to have regard to the historical context and the specificities of the religion in question, whether these concerned the tenets, rituals, organisation or other aspects. Relying on *Cha'are Shalom Ve Tsedek*, cited above, it considered that this conclusion logically flowed from the general principles established in the Court's case-law under Article 9, namely, freedom to practise a religion in public or private, internal autonomy of religious communities and respect for religious pluralism.

**The above mentioned fundamental principles (duty of neutrality and impartiality of the State, respect for religious pluralism, protection of freedom of thought, conscience and religion etc.) supported by the Convention and relevant judgments of ECHR were violated and totally ignored by the DoJ and also by the czech Authorities, which supported the Manila Authorities to deny the claims of Mr. Jaroslav Dobes, Ms. Barbora Plaskova and her minor Bono Plasek for recognition as refugees.**

#### **Statement of truth**

I am commissioned to write an objective report in this matter. I am fully aware that my responsibility in writing this report is to assist in matters within my expertise.

I have abided by that principle in writing this report.

I believe that the facts I have stated in this report are true and the opinions I have expressed are correct.

Dated: 30<sup>th</sup> of March 2016

Signed

*Dr. Athanassios Pantazopoulos*