



Constitutional Court

**PRESS RELEASE  
JUDGEMENT 36/2023**

**The Court rejects the appeal against the law assenting to the Belgian-Iranian treaty, but the victims of a convicted person must be informed of his transfer so as to be able to submit this for the review of the legality by a judge**

In 2021, A. Assadi, an Iranian diplomat was sentenced in Belgium for a terrorist offence. On 11 March 2022, Belgium and Iran concluded a treaty on the transfer of convicted persons. Ten persons and the « National Council of Iranian Resistance » requested the annulment of the provision assenting to this treaty since it would allow the transfer of A. Assadi to Iran, where he could be liberated immediately. O. Vandecasteele, a Belgian who has been detained in Iran since February 2022 and who has since been sentenced to 40 years in prison and 74 lashes of the whip, is intervening in the proceedings to oppose this request.

By its judgment no. 163/2022, the Court partially suspended the contested provision. In the context of the assessment of the substance of the case by judgment no. 36/2023, the Court rejects the action for annulment. It specifies however that in the event of a transfer of a convicted person the Government must proceed with a case by case balancing of the duty of protection with regards to the right to life and the right to human dignity. This balance must be able to be assessed by the Court of first instance. Thus, when the Government takes a decision to transfer, it must inform the victims of the relevant convicted person in such a way that they can effectively seek a review of the legality thereof by the Court of first instance.

### **1. Context of the case**

In February 2021, the Criminal Court of Antwerp sentenced Assaddollah Assadi, an Iranian diplomat, to 20 years in prison for an attempted terrorist attack. On 11 March 2022, Belgium and the Islamic Republic of Iran (hereafter : Iran) concluded a treaty on the transfer of convicted persons. Several persons and the « National Council of Iranian Resistance », who were civil parties in the trial of A. Assadi, request the annulment of Article 5 of the law of 30 July 2022 granting assent to this treaty. The applicants criticise the treaty for allowing the transfer of A. Assadi to Iran, where he could be immediately liberated. Olivier Vandecasteele, a Belgian held in Iran since February 2022, is intervening in the case to oppose this application.

By its judgment [no. 163/2022](#), the Court suspended the contested provision in so far as the treaty allows the transfer to Iran of an Iranian who was sentenced in Belgium for having committed a terrorist offence with the support of Iran.

After the handing down of this judgment, the sentencing in Iran of O. Vandecasteele to a prison sentence of 40 years and 74 lashes of the whip was made public. The latter states that he is being held in particularly undignified conditions and argues that the full entry into force of the treaty is indispensable in order to end his detention in Iran.

## 2. The Court's assessment

### 2.1. Admissibility

The Council of Ministers and O. Vandecasteele argue that the criticisms raised by the applicants are inadmissible since the latter are not Belgian nationals and do not reside in Belgium.

The Court notes that the applicants, natural persons, have acquired the status of victim under Belgian law. As such they benefit from several guarantees in the context of the enforcement of the sentence which they could lose as a result of the implementation of the contested provision. According to the Court, this status of victim acknowledged by a criminal jurisdiction constitutes, for the protection of these rights, a sufficient connecting factor with Belgium so that the Court may rule on their criticisms.

### 2.2. On the merits

#### 2.2.1. *The right to life*

The applicants invoke a breach of the right to life (Article 2 of the European Convention on Human Rights and Article 6 of the International Covenant on Civil and Political Rights). The law of assent would breach the victims' right to life in that it would authorise the Belgian Government to transfer to Iran a person sentenced in Belgium for an attempted terrorist attack on the life of others, with the support of Iran.

The Court recalls that **each State must take the necessary measures to protect human life. This includes the obligation to enforce definitive court decisions** that are pronounced in the context of respect for the right to life. The Court underlines in this regard that Iran has ratified the International Covenant on Civil and Political Rights, Article 6 of which guarantees the right to life.

Concerning the situation of O. Vandecasteele, the Court rules that **the right to lead a life in compliance with human dignity supposes that every prisoner be held in conditions that guarantee respect of human dignity**. This obligation results in particular from Articles 7 and 10 of the International Covenant on Civil and Political Rights, ratified by Iran.

The Court considers that **it currently results from the debates before the Court, and this** more clearly than during the assessment of the application for suspension, **that the action for annulment concerns not the unconstitutionality of the law of assent and of the treaty themselves, but the unconstitutionality of their application in a very specific case** which is not mentioned either in the law or in the treaty. The Court does not have jurisdiction to rule on the lack of constitutionality that would result not from the contested law, but from its application.

**It is not up to the Court to proceed in the abstract with a balance of the duty of protection with regard to the right to life, on the one hand, and with regard to the right to lead a life that complies with human dignity, on the other hand. This balancing act must be made in a concrete case and on a case-by-case basis, and must be open for judicial review.** It is up to the competent judge (in principle the Court of first instance), with respect for the separation of powers, to review the legality of the decision of the Government authorising the transfer of a person detained in Belgium towards a foreign State of which it is a national.

### *2.2.2. Compliance with the res judicata of Belgian Court judgments*

The applicants criticise the contested provision for not providing a framework for the discretionary power of the Government to transfer a convicted person to Iran. The *res judicata* of sentences would not be preserved.

The Court rejects this criticism. According to the Court, inter-State transfers of convicted persons have neither the purpose nor the effect of modifying the nature or duration of sentences pronounced by the Courts. Nor does it call into question the culpability of the sentenced parties. The implementation of a decision to transfer therefore does not breach the *res judicata* of the sentencing judgment. Furthermore, it is the responsibility of the Government when it takes a decision authorising the transfer of a convicted person to balance all the relevant interests at stake.

### *2.2.3. The victim's right to an effective remedy*

The applicants criticise the contested provision and the treaty of 11 March 2022 for not providing any effective remedy in favour of victims of an offence committed by a person in the case of a transfer of this person.

The Court rules that it could be admitted that by virtue of the principle of equality and non-discrimination (Articles 10 and 11 of the Constitution) the victims of the actions of a person likely to be subject to an inter-State transfer measure must be informed by the Government and that they must be heard on the matter, as it is provided for victims concerning the enforcement of sentences. Such an unconstitutionality would however not result from the contested provision nor the treaty of 11 March 2022, but from a legislative gap that is up to the legislature to fill. Such a rule should apply to all victims of the actions of foreign nationals likely to benefit from a transfer measure, whatever the State of enforcement.

The Court rules however that by virtue of Article 13 of the European Convention on Human Rights, **the victims of the actions of the convicted person subject to a transfer measure must benefit from an effective remedy** against this measure in view of the protection of their right to life. This remedy may be exercised before the Court of first instance or in cases of urgency, before the presiding judge of that Court. The Court specifies that **in order to guarantee the effectiveness of the remedy, the Government, when it takes an inter-State transfer decision** of a convicted person, **must ensure that the victims are informed of this decision**. Under this reservation, the Court rejects the criticism.

## **3. Conclusion**

The Court **rejects the appeal, under reservation of** the obligation for the Government, when it takes an inter-State transfer decision regarding a convicted person, to ensure that the victims are informed of this decision.

The Constitutional Court is the court that watches over the compliance with the Constitution by the various legislatures in Belgium. The Court can annul, declare unconstitutional or suspend laws, decrees or ordinances for violating a fundamental right or a rule on the division of competences.

This press release, drafted by the Court's media unit, is not binding on the Constitutional Court. The [text of the judgment](#) is available on the website of the Constitutional Court.

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