IN THE WESTMINSTER MAGISTRATES' COURT

THE RUSSIAN FEDERATION

Requesting State ("RS")

v

EVGENIY KOROLEV

Requested Person ("RP")

JUDGMENT

1. This is an application by the Russian Federation represented by Mr Peter Caldwell against Mr Evgeniy Korolev ("RP") represented by Hugo Keith QC leading Mr Ben Watson under Part 2 of the Extradition Act 2003. I am asked to send this case to the Secretary of State for her to decide whether the defendant is to be extradited. The application is opposed. Russia is a Category 2 territory and this is an accusation case.

2. The full hearing took place on 13th to 16th September 2016 with the final day on 4th October 2016. Written submissions were then provided by the parties before judgment given on 8th December 2016.

3. The requesting authority alleges that the RP is guilty of an offence of conspiracy to defraud between December 2007 and December 2011. Mr Korolev was a senior executive in a company called Tolliatiazot Corporation, known as Toaz. He was an advisor to the president of Toaz from 2003 and was vice-president from November 2009. In April 2011 Mr Korolev became the company's general director. He is also on the board of directors of Toaz. He is not a shareholder but he had a central position at the head of the managing company of Toaz, he was formally suspended from the board of Toaz in September 2015 by the Moscow Basmanny Court.

4. Toaz is a large, profitable and importantly independent limited company which is a producer and supplier of ammonia and carbamide. It is one of, if not the, largest producer of such products in the Russian Federation. It is alleged by the Russian Federation that this RP along with a Vladimir Makhlay, his son and two others (Mr Zivy and Mr Ruprecht) arranged for the sale of ammonia and carbamide to a company called Nitrochem at artificially low prices. Nitrochem on the direction of Mr Zivy and Mr Ruprecht is then said to have sold on the products at higher market prices and distributed the profits between the conspirators thereby defrauding the other shareholders of Toaz who would otherwise have gained from the initial sale at a true market price. Funds were said to have been distributed to Mr Makhlay, Mr Korolev and others. These are said by the Russian Federation to be secret profits derived from the fraud. The loss is said to be over three billion dollars.

5. Korolev's role is said to be that under instruction from Mr Makhlay and Mr Makarov the RP abused his managerial position by arranging for the sale of ammonia and urea at below market prices to Nitrochem which was then sold on at market prices by Zivy and Ruprecht. Mr Korolev is said to have been

part of the group which devised the scheme and participated in settling the price for the products. He is said to have benefitted from the scheme.

6. The request sets out the volume of the products sold with the sale price to Nitrochem compared to the market price at the time. I am invited to draw an inference that when the products were sold on the open market, the alleged conspirators receiving the difference between the two prices. I am not told that evidence has been obtained showing the money flowing into the accounts of any of the conspirators.

7. The defence team have prepared an extensive chronology shown at tab 2 of the core bundle which shows the lengthy and varied proceedings taken against Toaz since 1998. When compared to the evidence of the experts and other witnesses, the chronology sets out accurately the events leading up to these proceedings.

8. It is of note that the Russian Federation attempted to extradite Mr Makhlay (the then chairman of the board of directors) and a Mr Makarov (who was deputy to Mr Makhlay) in 2008-9 in relation originally to an alleged fraud and money laundering before the Government indicated just before the extradition hearing that they were seeking extradition of the RPs for tax evasion only. The Russian Federation did not challenge the case put forward for those RPs at the extradition hearing in front of the then Senior District Judge Workman.

9. After hearing evidence from Professors Bowring and Sakwa that the allegations were a cover for a company takeover and were politically inspired, the then Senior District Judge and Chief Magistrate Timothy Workman found that officials in the Presidential Administration were implicated in an attempt to influence a judge's decision in respect of Toaz. Judge Workman was satisfied that these extradition proceedings were "brought for the purpose of prosecuting or punishing the defendants for their political opinions" and ruled that their extradition was barred by reason of extraneous considerations under section 81(a) and (b).

10. The Senior District Judge also was satisfied that extradition would be incompatible with the RPs Convention rights. He found extradition incompatible with Article 18 because the request was made for motives other than a desire to bring the defendants to justice. The RPs Article 5 rights would be infringed. He was satisfied too that in any politically motivated prosecution, "pressure would be exerted directly or indirectly upon the Judiciary to a point at which they could not be regarded as independent and a fair trial under Article 6 would not be possible".

11. The important specific findings he made were as follows: the analysis of ammonia prices was superficial. Carried out by two military officers, it was a odds with a report of the Moscow Laboratory for Judicial Expertise which had concluded that erroneous conclusions might have been drawn. Judge Workman found that the expert evidence was to the effect that Toaz posed an implicit financial threat to the dominance of the political elite and thus the prosecution was to order for political reasons. Third was his important finding

that the trial would be held in the Moscow City Court under the supervision of Judge Yegorova with a reputation of giving rulings according with the wishes of the prosecution and interested political entities. If the then RPs were to be extradited, the trial would be political and the judge would come under pressure to provide the expected outcome. Judge Workman concluded that the overwhelming evidence was to the effect that "officials of the Presidential Administration attempted to influence and suborn judges who had conduct of cases that were of interest to the state". There were examples of judges being suborned, that of Judge Valyavina a judge of the arbitration court, who gave evidence in a defamation case that when she was trying a case involving Toaz a member of the Presidential administration Mr Boyev had told her she had failed to understand 'state interests' and she could expect problems if she applied for an extension of her judicial appointment.

Issues raised by the defence against extradition

12. The first issue raised by Mr Korolev is that it would be impossible for him to have a fair trial in the Russian Federation and that he should be discharged under section 81(b) of the Extradition Act 2003 ("EA"), the second limb of the extraneous considerations bar and section 87 because his extradition would not be compatible with his Article 6 Convention rights. He also submits that extradition should be barre because the request is in fact made for the purpose of prosecuting the RP on account of his political opinions (section 81(a)).

13. Mr Keith QC and Mr Watson argue that the prosecution which gives rise to the request comes about because of a corporate raid one of the last remaining major independently-owned companies in the Russian Federation. It is a prosecution to order, the order being given by a minority shareholder who wants to takeover Toaz.

14. After the request was refused in relation to the President and Vice-President of Toaz in 2009, the RS has returned this time with a request aimed at Mr Korolev. In 2008 and 2009 the RS did not engage with the proceedings in front of Senior District Judge Workman and Mr Korolev's defence team submit that this has happened again. They submit that the RS should not be able to rely on any presumption of good faith in these proceedings.

15. Mr Caldwell contends that unlike the earlier request, there is no evidence that Mazepin who is the complainant in the criminal prosecution launched against Mr Korolev and others is connected to any political interest or the executive. The lack of such evidence does not allow the court to assume that the request represents the continuing of a previous political agenda. He argues the court must distinguish between corporate raiding by a private interest and a state sponsored corporate raid. He points out that a prosecution may be pursued and prosecuted in good faith even though it may be a malicious complaint. The determination would be a matter for the court. There is no evidence of a prosecution to order in this case and no evidence of an abusive state involvement.

16. The second issue raised is that the RP's extradition would be incompatible

with Articles 3 and 5 of the ECHR and that he should be discharged under section 87 of the EA. If Mr Korolev is returned he is likely to be held in SIZO 5 in Moscow. The defence relies on what it says is the evidence that Professor Morgan was misled when he visited that SIZO when looking at the conditions in relation to another extradition case. It says the conditions are such that the RP's Article 3 rights are engaged. Mr Caldwell points out that an assurance has been given that in relation to where the RP if extradited would be held on remand. There is no assurance in relation to what would happen if the RP were to be convicted. The RS refuted the contention that Professor Morgan was deliberately misled when he considered the conditions of SIZO 5 in December 2014.

17. Finally the RP raises abuse of process, the origins of the prosecution are such as to require him to be discharged under the Court's abuse of process jurisdiction. Mr Caldwell contends that the court should only consider abuse of process if the other challenges fail.

Evidence

18. The evidence put before the court included many bundles of documents including the original request, additional information from the Russian Federation and defence evidence including a number of expert reports and statements with exhibits. In terms of witnesses called to give evidence the court heard from the defence witnesses Professor Sakwa, Mr Gladyshev, Mr Zamoshkin, Dr Mitchell (the prison expert), Mr Golubok and Mr Ivanov. The RS did not call any evidence.

Evidence - RS

19. The RS's request at tab 4 volume 1 of the core bundle sets out the alleged offence and the RP's role in it. He organized Toaz' sale of the ammonia and carbamide at an under value to a Swiss company Nitrochem before it sold the products on at market value. Nitrochem was controlled by Mr Zivy and Mr Ruprecht who also owned shares held in offshore companies in Toaz. The loss caused by the alleged fraud is said to amount to a total of over $US3 billion.

20. As a result of an enquiry from the Crown Prosecution Service, further information was received which is found at tab 4a of the core bundle. This is dated 14th September 2016 and is as a result of evidence and the chronology produced by the defence.

21. The further information explains that the investigation of the case started in 2012, it was transferred firstly from the Samara region to the Privolzhskii Federal District on 29th May 2013 and from the Federal District to the Central Investigation Department of the Investigative Committee of the Russian Federation on 24th April 2014. It says that the period the RS is interested in is between 1st January 2008 and 31st December 2011. The earlier charges dealt with the then Chief Magistrate Senior District Judge Workman are "not similar to the charges in the present case, they are based on other evidence and

they are not connected with the investigation in the [earlier] criminal case".

22. The document sets out the alleged fraud. A new element is a recording apparently made of one of the most important co-conspirators Mr VN Makhlay (the RP in the earlier case dealt with by the then Chief Magistrate). The English translation is not particularly good but it would appear that Mr Makhlay is agreeing that something dishonest was going on involving Mr Zivy (of Nitrochem and shareholder via off shores of Toaz) then on his death involving Mr Zivy's son and Mr Makhlay's sons and deputies. The Russian Federation regard this recording as confirming the existence of a crime.

23. The further information looks at forensics at paragraph 5. It points out that Korolev's lawyers in Russia asked for the appointment of an economic expert to examined the export prices in the period of the alleged fraud. It was Mr Korolev's lawyers who had asked that the Federal State Research Institution "Institute of Legislation and Comparative Law under the Government of Russian Federation" be appointed to conduct that work and they should not complain about the conclusions reached by the independent experts they had asked to be appointed. The actions of the head of the expert institution complained of by the defence had been designed to ensure objectivity, completeness and legality which was its responsibility.

24. The document confirms that the sale at under value was confirmed by tax audits. The origins of the market price indicators are given as coming from independent agencies which are named. There is also information in the difference in prices in other cases which are given. In addition the courts have established that there is interdependence between Toaz and Nitrochem and this is confirmed by a report commissioned by SV Mahlai written by Ernst and Young.

25. The information set out above was verified by the Supreme Court which looked at the complaints filed by Toaz, it did not find any irregularities as alleged by Toaz.

26. In terms of where the RP might be held if extradited, Mr Gorlenko sent a letter of 17th March 2016 in which he gives an assurance that if extradited he would be held on remand in SIZO 5. There is no assurance in relation to where Mr Korolev would be held if convicted. In terms of capacity, the letter of 2nd March 2016, sent by Mr Goryunov explains that on 1st March SIZO 5 with a capacity of 959 persons contained 1449 prisoners due to the temporary closure of SIZO 7 in Moscow. The overcrowding was in the order of 151%.

Evidence - defence

27. The RP did not give evidence although on 14th October 2013 he had provided a series of answers to questions provided to him by his lawyer the witness Mr Zamoshkin. These are set out in volume 12 tab 45. In that document he sets out the way the prices for the products sold by Toaz are fixed and sets out the numerous considerations that would inform such a decision. Continuity of production is one important aspect of this. If production has to stop it involves

the company in great loss and therefore if a wholesaler takes the whole production continually it saves the company a great deal of money. Nitrochem is not the only company which buys Toaz' products but it has a long-term partnership with the company and their contractual terms ensure continuous large-volume sales. Nitrochem has enabled Toaz to sell all its products for many years and this has ensured a stable sales' volume.

28. Mr Korolev was asked about the contracts he entered into with Nitrochem. The contracts and waybills, customs declarations, invoices etc were seized from Toaz in Togliatti on 18th February 2013. He explained he signed contracts and supplementary agreements with that company from 4th and 9th December 2009 onwards.

29. The RP pointed out that pricing decisions are taken by a committee of which he is not a member. He did not know about the share ownership of Mr Zivy or Ameropa in Toaz.

30. The only answer he gave that I questioned was when he said that he had been on a business trip since 14th February 2013. I found that most unlikely. It seemed to me he had been avoiding the risk of prosecution by staying out of the Russian Federation.

31. Other evidence from Mr Korolev is found in two transcripts of interviews conducted with him in relation to the investigation into what has been named "the lawyers' case". The first was a rather careful series of answers given on 14th December 2011 to investigators found at volume 11 tab 24. He says that Toaz complied with the legislation and has provided documentation to the minority shareholder's representatives accordingly. He is interviewed again on 31st May 2012 at volume 11 tab 29 when he answers more openly and seems to be accepting at one point that the documentation was not provided to Uralchem although this may be a misreading of his answers on my part.

32. **I heard evidence from Professor Sakwa.** He had provided a report at tab 9 of the core bundle and had given evidence in the earlier extradition case in front of Senior District Judge Workman. The then Senior District Judge described his evidence as "clear, balanced and well informed". He said Professor Sakwa was a highly regarded expert in his field who had given evidence before Judge Workman on a number of occasions (Judgment tab 5, page 4, paragraph 13). In 2009 Professor Sakwa described Toaz as being of importance "within the strategic industry which Mr Putin, first as President and now as Prime Minister wished to keep under State control and 'National Champions' were appointed to their boards". The regime was said by the Professor to be concerned about business figures such as the then RPs who might be a threat with Toaz resources to the dominance of the group close to the administration.

33. Professor Sakwa set out the history of corporate raiding in Russia and described the first attack on Toaz, the failed attempt to extradite Mr Makhlay and Mr Makharov and finally the second attack on Toaz and the extradition request. He explained that the Russian Federation has developed a dual State,

democracy and an authoritarian system co-exist but allow corporate raiders to flourish. In terms of the law, two systems operate, one with impartial legal norms and the other with arbitrary power which is unrestrained by law. There are two political systems operating, an open public one with democratic institutions and a second with informal factions "operating within the framework of the inner court of the presidency" (paragraph 31 of his report).

34. Importantly the institutions, notably the court system, became susceptible to interference and was subordinated to political authority. In certain cases where State commercial and/or political interests were engaged, independent courts and the rule of law have been undermined. In more recent years what he calls a third State has emerged. This comprises security officials, business people and bureaucrats who collude to gain personal and political benefit. The expert describes a system of "meta-corruption" in which the agents of the state are heavily implicated. The administration is put at the service of criminal activities and the independence of the courts is undermined. Russia's security services have a vast budget and are a core element of the politicized economy "allowing raiding by security officials in cahoots with susceptible judges and corrupt officials". The security forces have a special role but this is balanced by other features in the complex power system. They operate a sub-state within the regime. Putin balances the factions and does not allow them to dominate the executive.

35. Police reforms by Medvedev in 2010 took place because of concerns that they were beginning to threaten governance. There was much evidence that the police were involved in criminal activities. "To ensure loyalty, the system allows police and security services to make money from their licence for violence. One of the most common is raiding businesses for competitors". The Professor explains the notorious Magnitskiy affair in which a successful company fell victim to a corporate raid conducted by corrupt police supported by corrupt judges which led to the death in custody of a lawyer.

36. The expert explains that when President Medvedev came to power he understood that Russia needed modernization for the economy to prosper. He recognized the role of the Russian judicial system in allowing attacks against business. Tens of thousands of small and medium business leaders and managers had been imprisoned. He created a business ombudsman. Putin himself has now recognized (core bundle tab 9, paragraph 56) that businesses were being persecuted. Entrepreneurs were being "harassed intimidated, robbed and then released". Putin had asked the investigative authorities to look into this.

37. Professor Sakwa speaks about corporate raiding or Reiderstvo which is the acquiring of businesses via manipulation of the law often with the involvement of law-enforcement officers and the courts. He points out that those cases show a number of similar characteristics to the Korolev case. A businessman is charged with economic crime, he is threatened with pre-trial detention and usually there are two possible outcomes, one that a deal is agreed and assets are handed over or the businessman goes to prison and the assets are acquired then.

38. Importantly the expert points out that in the earlier Toaz case, a judge in the Samara Arbitrazj court (Judge Kostuchenko) was sacked. She took her case to the ECtHR saying that it was as a result of her decisions in the Toaz case. Another judge, Elena Valyavina also said she had been pressured in relation to a Toaz case. This was reported on by a Russian quango which explained that the raids on Toaz used multiple methods, both legal and illegal, carried out by commercial competitors.

39. The Professor reminded the court that Russia was 119th in the Corruption Perception Index 2015 which was an improvement on the previous years but it ranks with Azerbaijan, Guyana and Sierra Leone. The State's well known raid on Yukos is said to have emboldened corporate raiders. Yukos was brought to its knees by abusive tax demands and transferred to Rosneft.

40. Professor Sakwa set out in paragraph 69 of his report the indications of a prosecution to order. They include "weak evidential foundations, obscure charges (often involving what appear to be more civil rather than criminal issues), a powerful complainant, an accused with assets worth attacking (thus becoming part of a classic 'raid'), past evidence of pressure, undue haste in issuing an order for arrest, and too often collusive behaviour between the prosecutors and the courts in ensuring that the respondent is committed repeatedly to remand".

41. The US Department of Justice Legal Advisor at the US Embassy in Moscow is quoted in Professor Sakwa's report. In 2008 Mr Firestone describes raiding as a new and sophisticated form of organised crime which relies on court orders, shareholder resolutions, lawsuits, bankruptcy proceedings, and other ostensibly legal means as their cover for criminal activity. It is aimed at not just obtaining a portion of the business profits but the entire business itself. Mr Firestone goes on to describe 'prosecutions to order' to sabotage competitors, prosecutions initiated by law enforcement agencies for reasons of extortion. In 2008 Mr Firestone said the problem of commissioned criminal cases was widespread.

42. An important feature of the 'prosecution to order' is 'telephone justice' which is the way executive authorities can influence cases in the court process. In 2004 Basmanny justice became a term used to describe the routine procedural violations which occurred in Basmanny district court at this time. The current head of the General Prosecutor's Office ("GPO") is Mr Chaika who was appointed in 2006. There have been repeated allegations of corruption made against him and his family. In 2011 the GPO lost some of its power to a body called the Russian Investigative Committee which was answerable directly to the President and there was inter-departmental conflict between the two departmental bodies which continues.

43. Professor Sakwa and the witness, the lawyer Mr Gladyshev both explain the first attack on Soaz. In the Professor's report it is set out at paragraph 80 onwards. Mr Makhlay and Mr Makarov were the two most prominent executives of the business and in 2005 a prosecution was launched alleging

that between 2002 and 2004 Toaz was selling its ammonia products to Nitrochem at an undervalue of 20%. Nitrochem then sold the products on at market prices and the profit on the difference was split between Nitrochem, Mr Makhlay and Mr Makarov. Tax was only paid on the sale to Nitrochem and not on the later profits. The profits made by Mr Makhlay and Mr Makarov were then hidden from the other shareholders and laundered through various false loan and investment contracts and fed back into Toaz via those vehicles.

44. Extradition proceedings were launched and as set out above the then Senior District Judge Workman discharged the two men on 8th May 2009 with the judge accepting the argument that the criminal case was being conducted to punish them for political reasons and above all to facilitate the takeover of the company by raiders. The Professor explains that the court accepted the case "was part of the struggle for the redistribution of property in Russia, and that if they were returned to Russia there was a high probability that a number of their Convention rights would have been breached" (paragraph 85 page 18).

45. The Professor explained in relation to Nitrochem that it is a subsidiary of Ameropa Holdings part of the Ameropa Group which is "one of the world's leading companies in the marketing and distribution of fertilisers". Ameropa is owned by the Zivy family and one Beat Ruprecht is the director of Nitrochem. In the 2008 case it was claimed by the prosecutors that Nitrochem was owned by Mr Makhlay. In the first case in the Russian Federation, Mr Makhlay and Mr Makarov were able to show that the product was not being sold at an undervalue. The Swiss authorities were asked about Nitrochem and rejected the assertion made by the Russian Federation that either of the two Mr Makhlay or Mr Makarov had direct or indirect control over Nitrochem.

46. In the current sales at under value case, it was being alleged that Zivy had a majority share in Toaz. The direct opposite of how the case was presented in 2008. Another request for information was sent to the Swiss authorities who responded explaining that neither the Nitrochem managers owned any shares in nor Andreas Zivy owned a majority share in Toaz. The Office of the Swiss Attorney General said in their response of 6th October 2015 "Contrary to the facts of the matters set out in the request, this information shows that price fixing cannot have taken place between EA Korolev and the company Nitrochem AG on account of a majority holding of the company Nitrochem or of Andreas Zivy in [Toaz] for the supply of ammonia and urea. In our view, this undermines the description of the facts of the matters set out in the request" (tab 9, paragraph 95).

47. Professor Sakwa pointed out that in May 2007 a civil judgment by the Samara Oblast Arbitration Court dismissed the claim by the then minority shareholder Tringal Equity Inc (Vekselberg) against Toaz for US$42.8million for loss of dividends. In September 2007 a decree terminated the criminal case against Mr Makhlay in which he was charged with tax evasion on sales at undervalue. The important conclusion of the court was such sale at undervalue, "did not occur as a matter of fact" then the Avtozavodsky District Court ruled that the institution of proceedings had been unlawful and unfounded. Professor Sakwa

pointed out that these courts' rulings were supported by the Federal Commercial (Arbitration) Court of the Volga District on 29th July 2008 which held that Toaz had been in compliance with tax legislative requirements. This was a case where Toaz was making a claim against the local tax office. On 25th August 2008, the Moscow Arbitration Court upheld Toaz' appeal against the local tax office in relation to money owed and found that the prices applied by Toaz in 2005 corresponded to world market prices taking into account the particulars of the agreements between Toaz and their purchasers. Thus both criminal courts and the arbitration courts had determined the allegations to be unfounded.

48. Professor Sakwa said there are clear parallels between that last attack on the company and what is happening now. The purpose of the earlier attack was to cause collateral damage to enable a take over of a strategically valuable asset. The same applies in the present case against the RP (paragraph 101).

49. If the charges were to to be upheld in court then the losers (the minority shareholder) could bring civil claims against Toaz. This would weaken Toaz and leave it open to takeover. It would be about personal gain but also to bring this large independent company into State friendly hands.

50. The original raid was, according to the expert, masterminded by Mr Vekselberg who was an oligarch close to the Kremlin leadership. He owned 9.14% of the shares in Toaz. The ultimate goal was said to be the merging of Taoz with Gazprom to bring Taoz into control of State allies. The expert identified a key strategy in the first raid as getting hold of the shareholders' register to enable the raider to get co-operation from them. The expert identified that this was a particular concern of the criminal investigators which suggested to him a degree of complicity between the raiders and the investigators.

51. Mr Vekselberg sold his shareholding to Uralchem (a major competitor of Toaz') which is owned by the oligarch Mr Mazepin. In terms of Mr Makhlay and Mr Makarov the fraud and money laundering charges were dropped in April 2009 and the tax evasion charges dismissed in April 2010. This was after the Supreme Arbitration Court found that the claims of sale at an undervalue were entirely unfounded.

52. There was a gap before the attack revived this time spearheaded by Mr Mazepin and Uralchem. Mr Mazepin's reputation is said by Professor Sakwa to be as a ruthless corporate raider. At paragraphs 127 onwards the expert has analysed Mazepin's links with the Kremlin. His conclusion in relation to Mazepin's involvement with another company is that was extremely unlikely to have occurred without the Kremlin's approval.

53. I also heard evidence from **Sergey Zamoshkin** (core bundle, tab 6) who is a lawyer working in Moscow who had been representing Mr Korolev in the proceedings in Russia and before that had represented Mr Makhlay and Mr Makarov. His evidence overlaps with that of Professor Sakwa's in many ways. He explained that Toaz is of real significance to the economy as well as

highly attractive to rivals. He said that Mr Mazepin as well as Mr Vekselberg is close to the Kremlin.

54. The witness ran through the history of the proceedings taken against Mr Makhlay and Mr Makarov and the lawyers' case. In 2010 Uralchem pursued civil cases against Toaz including a claim that Toaz was preventing Uralchem from obtaining a list of shareholders in Toaz. The Arbitration Court in Somara Oblast rejected the claim for damages in 2011. In November 2012, this time criminal charges were laid by Uralchem against the Toaz lawyers alleging that they had failed to provide a list of shareholders when asked. The loss was said to have been caused because Uralchem had entered into a contract with Belport Investment Ltd by which Belport was going to buy Uralchem's shares in Toaz. Belport could withdraw from the contract if they were not provided with the shareholder information, there was a contract penalty that Uralchem was to pay.

55. As the witness points out by launching the criminal case the investigators were ignoring the fact that the arbitration court had found that the actions of Toaz were lawful and the documents supplied. The damages now alleged were US$250 million not the US$1 million alleged earlier. Mr Korolev signed some of the complaints made to the investigators that the case was unlawfully brought.

56. Mr Zamoshkin said that the lawyers' case was brought not just to weaken Toaz's financial position by making a claim for huge damages but also to obtain documents which the complainants were not lawfully entitled. In March and May 2012, documents were taken in searches which had nothing to do with the case against the lawyers. Uralchem as the aggrieved party had access to all the seized documentation. The lawyers' case was terminated by the Investigation Committee on 14th November 2013.

57. In the meanwhile, Mr Zamoshkin explained that on 6th December 2012, Uralchem made a new complaint, that of fraud. To begin with there were no identified defendants but Mr Korolev was placed on the wanted list on 29th March 2013 because it was said he had breached an undertaking not to abscond. Mr Zamoshkin explained that they appealed this decision because Mr Korolev had not given an undertaking. Whereas it was said that the RPs whereabouts were unknown, the investigator had been told where he was, that Mr Korolev could not appear because he was on a business trip in the United Kingdom. Initially the court rejected the decision of the investigator but on appeal it was upheld. The Russian Federation in their request documents set out that Mr Korolev left the jurisdiction on 14th February 2013 (page 30) whilst the pre-trial restraint was imposed on 25th March 2013 in the form of a recognizance that he be of good behavior.

58. Mr Zamoshkin said that on 9th December 2013 the investigator put forward a new charge of fraud with new dates, between 1st January 2010 and 31st December 2011 and the loss was said to be US$270 million. Further new charges were brought against the RP on 5th August 2015 when he was charged that he was involved in a conspiracy to defraud between 1st January 2008 and

31st December 2011 with the Makhlays and the Nitrochem managers Mr Zivy and Mr Ruprecht. The value for the stolen products was then said to amount to over US$3 billion. Mr Zamoshkin points out what he calls the absurdity of the RP being charged with the theft of the whole of the products sold in that period. The profit was paid to Toaz which then paid for salaries and equipment etc. The lawyer points out that in the second Yukos case, Mr Khodorkovsky was charged with theft of all the product in the same way. The same investigator was involved in the Toaz case.

59. Mr Zamoshkin's view was that the amount of US$3 billion is being used to shock the courts. Furthermore the investigator was not complying with the Criminal Code when he failed to serve on the RP a summons to attend for interview and the hearing. He was deprived of his right to complain about the unlawful summons and prepare for the investigation and hearing. His defence team were not told either, neither were they told of the important steps of the delivery of the charging decrees of 8th April 2013 and 9th December 2013. They found out about these by chance.

60. Mr Zamoshkin at his paragraph 61 makes the allegation that the courts have been deliberately misled by the investigators when they said that Mr Korolev had been told about the place and time of the hearings. When the court found out about these, the court took action to inform the RP and it forced the investigators to send notifications to the RP. He also relies on the fact that when the Nizhegorodskiy Regional Court on 21st April 2014 directed the lower court to review the petition of the investigator to arrest the RP, the petition for arrest was considered by Moscow's Basmanny Regional Court instead.

61. Mr Zamoshkin went on to consider the expert evidence obtained in the Russian case against Mr Korolev. The crucial evidence had to be in relation to the sale at undervalue to Nitrochem. Independent expert evidence was required and he said it had not yet been obtained. The first order for expert evidence was made on 15th May 2013 by the investigator of the investigative committee of the Russian Federation of Samara Oblast. The expert instructed was a Mr Gurkenkov. His report of 27th October 2013 was of poor quality (tab 6, paragraph 66 of Zamoshkin) and he did not appear to be appropriately qualified to carry out the work. The defence successfully challenged that expert report and the court granted the application for a repeat exercise. This time on 15th February 2014 the investigator instructed that the Institute of the Legislature and Comparative Law ("the Institute") should carry out the piece of work. On 25th December 2014 the investigator appointed three experts, Velentei, Doronina and Semilyutina including a mother and daughter ("the three experts") to do the expert report on market prices.

62. Before their appointment in the criminal investigation, in a continuation of the tax evasion case mounted against Toaz in the Arbitration Court a Mr Kazantsev was appointed to provide expert economic analysis. A well respected expert he concluded that the products were sold at market price. This report was submitted to the Arbitration Court but then withdrawn by the same institute (volume 13, tab 61, page 5). The Institute explained that the

report was not sent with an accompanying letter on official headed paper signed by the Director or Deputy Director and the expert's signature had not been verified. More relevantly perhaps the letter to the arbitration court from the institute says the report is unfinished. The Institute asks for the report entitled "expert conclusion No. 1/14 of 23.07.2014" to be returned and asked the court not to consider it the final definitive expert conclusion. The Arbitration Court allowed the preparation of a new report but explained that once filed with the case papers it could not be withdrawn (volume 13, tab 62). Due to the absence of Mr Kazantsev through illness and then holiday he was not available so the Institute suggested three experts (volume 13, tab 63). The three experts then produced a report for the Arbitration Court contradicting Mr Kazantsev's.

63. Mr Zamoshkin said that in an earlier tax evasion arbitration case in 2009 a Mr Selivanov was the expert instructed who produced a report to the effect that the sale was at market value before his report was withdrawn and the three experts (including the mother and daughter) were instructed. The three experts found the sales were not at market value.

64. In relation to the criminal case, the defence appealed the ruling of the investigator to appoint the three experts on the basis that they were not objective as they had already found the sales to have been made at an undervalue in the arbitration case. More importantly from this court's perspective the three experts were said not to have the relevant qualifications and experience plus two of them were mother and daughter. The investigator allowed part of the appeal and one of the mother and daughter was removed from the instruction.

65. The defence team saw the expert report of the now two experts in October 2015. The defence case was that the methodology used by the experts was unscientific and the unique position of Toaz which produces a large amount of the products and transports it through a pipeline to Odessa cannot be compared with the operations of the other Russian companies producing the same products in lower volumes and transporting them by rail and lorry.

66. The witness' conclusion was that there was no objective evidence which confirms the charges made against the RP showing his involvement in the intentional reduction of prices in the sales to Nitrochem. Mr Zamoshkin says that investigation in Russia is not objective and he is unable to have a fair trial as was confirmed by the hearings in the case.

67. **Vladimir Gladyshev** is a lawyer in Moscow who has been representing Western and Russian companies in Russian courts in commercial cases. He had a tax and corporate practice and appeared for clients such as Procter and Gamble, Johnson and Johnson and PricewaterhouseCoopers etc. He also gives advice on criminal law implications of tax and corporate law aspects of his clients' business. In recent years he has been giving advice in relation to corporate raiding. He has also acted as an expert witness in a number of extradition cases involving the Russian Federation.

68. In his report, Mr Gladyshev examined the independence of Russian criminal courts. Those courts are to a considerable degree unreformed with what is still an almost total control by the prosecution over the criminal process. A 2009 report prepared for the then President Medvedev said that in important cases a Russian court would seek to protect the interests of State officials over the rights of the citizenry and businesses. The problem is the "overbearing influence" that the executive can exercise over judges. Arbitrazh Courts are less dependent than the others. Mr Gladyshev relies on reports in 2009 and 2010 in which observers and others point to the judges not being independent or at least not being perceived to be so. The judiciary were more akin to defenders of the interests of the state. Telephone justice was still administered by court presidents. This was routine but not always needed as judges are aware of the expectations in a case. If they do not comply they may be disciplined or not have their terms reviewed.

69. Mr Gladyshev pointed to the weakness that the rules of criminal procedure favour the prosecution over the defence. He gives examples of this in his report at paragraphs 64 onwards. The conviction rate is in the order of 98% which perhaps reflects this weakness. The 96% conviction rate for especially grave crimes are because they are more likely to be tried by juries. However political influence is less obvious in routine decisions in the criminal courts. The witness quotes the most recent statitistics of the Supreme Court which shows that of the judgements returned in 2015, only one of 277 was acquitted (paragraph 114). The witness also noted that acquittals are appealed and in over 30% of cases those acquittals are overturned. A 2014 study on the reversal of acquittals found that "an acquittal is considered an extraordinary and negative event" and "a harmonious structure of negative stimuli" is in place to punish those responsible for acquittals (tab 10, page 25, paragraph 119).

70. Mr Gladyshev looked at the prosecution of two shareholders in Yukos which occurred when the defendants were charged with stealing all the product of the oil and the loss was calculated by working out the wellhead price of the oil and the price the final customer paid multiplying it by the number metric tons sold. The transportation costs etc were said to be the costs of running a criminal enterprise.

71. In essence, as far as I understand it, the Yukos defendants were charged with selling at an undervalue. Mr Gladyshev says the loss to Toaz and its shareholders in the case against Mr Korolev et al has been calculated in the same way. He notes that Mr Tumanov was a principal investigator in both cases. The fairness of the Yukos trial was examined by international experts. The expert evidence relied upon by the prosecution in Yukos was said by the International Bar Association to be flawed. Efforts of the defence to rely on their own evidence was mostly rebuffed. The IBA concluded that the trial was not fair. Mr Gladyshev considers that the level of justice since then has deteriorated.

72. The then President Medvedev commissioned a report on the second Yukos trial written by nine experts forming the Presidential Council on Human

Rights. It reported on 21st December 2011. The Council found a number of very serious violations including in the "presumption of innocence, a lack of competence and independence of the court; non-consideration and rejection of evidence favourable to the defendants; the prosecution was unfairly granted procedural advantages over the defence; and a multitude of other violations. A comparison of the indictment and the verdict revealed that the judge simply copied vast tracts of the indictment, verbatim, into the verdict".

73. Worryingly in 2013, press reports said that the Russian experts who had been members of the Council were accused of having given false expert opinions and were subjects of searches. It was said they were paid to give their views on the Yukos trial by associates of the defendants. The Investigative Committee even went to the lengths of trying to accuse the German member of the Council of using laundered Yukos money to buy foreign experts but Germany denied the request for mutual legal assistance in September 2013 (Core bundle 1, tab 10, page 40, paragraph 166).

74. Mr Gladyshev said the overall system of justice in the Arbitrazh Courts is satisfactory although influence can be exercised in individual cases. The problem in the criminal court is described by this expert as a "lateral influence exercised by the investigators through Procuracy". Then the Investigative Committee took over the investigative functions of the Procuracy and it "is directly subordinated to the Russian Presidency" (Core bundle 1, tab 10, page 19, paragraphs 91 to 93). Investigators are said to control judges subtly, via the chairman of the court who distributes the cases to the judges.

75. Mr Gladyshev explained in his evidence that the lawyers' case had all the indications of a raiding attack led as it was by a competitor of the company. The charge was a failure to provide the list of shareholders to Uralchem yet it had been provided to the criminal investigators. Despite that the investigators conducted thorough searches of the Toaz offices. Mr Gladyshev pointed out in his report at paragraph 236, that because these actions are so common, the Highest Arbitrazh court had said that these requests by minority shareholders particularly who are competitors may be behavior aimed at harming companies. The repeated requests made by Uralchem a competitor of Toaz was a sign of abusive behaviour. It turned out that the whole contract with Belport was a sham and far from owing Belport $US1m, Belport was controlled by Uralchem.

76. Mr Gladyshev explained that sweeping searches which were not justified by the facts of the case or legitimate needs of the investigators had other motivation such as a fishing expedition, intimidation or to assist a competitor to whom the information from the searches is given.

77. On 10th November 2013 the criminal case was terminated and in the resolution which terminated it the court made clear that the agreement with Belport was fictitious and produced to harm Toaz. The court decided that a "theoretical calculation of a future dividend did not correspond to the certainty required in a criminal case". The court recognized that the factors of price determination set out above were valid.

78. Mr Gladyshev points out that the current case does not mention the complex factors involved in price setting which were mentioned in the 2005-7 case. He also questioned whether the facts if proved could amount to a crime in Russian law.

79. In relation to Basmanny District Court, Mr Gladyshev explains at paragraph 246 that the court has become infamous for politically directed outcomes.

80. In terms of a fair trial, the witness is concerned that three witnesses are unnamed in the Dermination on the election of restraint in the form of pretrial detention. Mr Gladyshev suggests that that anonymity is usually reserved for offences of violence and organized criminal groups. It might lead to the hearing of those witnesses in private which Mr Korolev would be unable to challenge. He or his lawyers would be unable to question them. The expert gives an example of a case in which the statements of 19 witnesses were read. An appeal against conviction was refused. This would breach Article 6 3 (d).

81. The fact that three witnesses are not named in the request papers does not augur well for Mr Korolev's trial. Other considerations are that the criminal justice system is institutionally biased in favour of the prosecution. Mr Gladyshev is of the view that the facts of this case lead him to believe that the bias is unlikely to be corrected. He also considers there is missing mandatory information in the Order to involve a person as accused and other key elements missing. He says that frustrating expectations as to future profits cannot be characterized as misappropriation of property.

82. **Mr Ivanov** gave evidence to this court in 2008/9 and again in the Korolev case. He explained that he had been a representative of Togliatti and the Samara Region in the State Duma (Parliament) of Federal Assembly of the Russian Federation from 1999 to 2011. He gave evidence about the corporate raiding aimed at taking over Toaz. He explained that the company was a respected employer in the region and plays an active part in social welfare. Mr Makarov of Toaz contacted the Duma representative soon after the Moscow office of the company had had a visit from the Ministry of Internal Affairs (Russian police) in 2005. They were looking for a copy of the shareholders' register. This visit was just after a 10% shareholder in the company failed to have his candidate appointed to the board of directors. The witness looked into the visit and was told that "somebody very senior" had given instructions that they should look for evidence of criminality. The aim of this was to force Mr Makhlay (the majority shareholder) to sell his shares. He discovered that the visit was at the request of the governor of Krasnodar Region, a Mr Tkachenko and the complaint was that Toaz had been illegally privatized.

83. Mr Ivanov considered that the involvement of the governor indicated the search was backed by the highest level of authority. The witness was concerned about the large number of corporate attacks going on and brought the Toaz search to the attention of the State Duma and the press. In mid 2008 Mr Vekselberg (of Renova) sold his shares in Toaz to Mr Mazepin.

84. One of Mr Ivanov's colleagues from the State Duma who was associated with Mr Mazepin told the witness that the criminal proceedings against Mr Makhlay and Mr Makarov would be dropped if the former would sell his shareholding to Mr Mazepin. Mr Ivanov was told to encourage Mr Makhlay to do this.

85. Mr Ivanov explained that in 2008/9 he had said the proceedings against Mr Makhlay and Mr Makorov were abusive and unlawful. He was of the view that the proceedings now were "part of the same raid attack against Toaz and have no substance. The sad reality is that when the extradition request against Mr Makhlay and Mr Makarov failed and criminal proceedings were closed on 1st April 2010, the attempts to overtake Toaz never stopped".

86. Mr Ivanov said at his paragraph 19 that the charges against Mr Korolev were brought to put pressure on Mr Makhlay to sell his stake in Toaz. "The facts of Toaz case and criminal charges brought against Mr Korolev are so absurd and so similar to the earlier case that I formed a clear view that the corporate raid attack still continues".

87. Mr Ivanov outlines the history since May 2011, firstly the Samara police asked Toaz for all their documents for the past three years. Toaz lawfully refused to give them to the police. The police then visited Toaz to seize the documents. Then the tax authorities turned up to conduct a tax inspection for the last three years. Mr Ivanov made enquiries with the Minister of Internal Affairs and the Prosecutor General and he was told that the police actions were lawful. The replies said that the Main Department of the Ministry of Internal Affairs of the Russian Federation of the Samara Region had been asked to investigate Toaz' activities by the Department of the Economic Safety of the Ministry of Internal Affairs. Mr Ivanov went to the press. In his paragraph 22 he explains he continues to support Toaz and Mr Korolev because he is convinced that the criminal charges brought against Mr Korolev are unlawful and abusive and part of a long lasting corporate raid attack on Toaz.

88. Mr Ivanov refers to Toaz employees complaints that Uralchem is constantly initiating abusive document seizures and unfounded tax and criminal claims whose sole purpose is to collect document for an unlawful takeover of Toaz.

89. In his paragraph 30, Mr Ivanov says that the latest raid on Toaz "has turned out to be even closer to the structures of power and is no doubt supported by the state". Although he does not give any reasons why he is of this view quoting from something a high-ranking official told him in 2009.

90. **Dr Mitchell**, a medical practitioner and member of the CPT gave evidence that he had conducted a number of visits to prisons in Europe. He had never visited the Russian Federation. His evidence was based on what he had read in relation to the conditions in Russian Federation prisons and his job appeared to be to criticise Professor Morgan's findings that the CPT would not have found the conditions in SIZO 5 to be inhuman and degrading.

91. Dr Mitchell pointed out that out of 24 reports of CPT visits to the RS, the Russian authorities agreed for only three to be published. They were in 2001, 2011 and 2012. In 2012 the CPT reported that it had been given misleading information in relation to the closure of a particular block in a SIZO and the extent of the overcrowding in another SIZO. Dr Mitchell pointed out that after *Ananyev and Others v Russia* the ECtHR considered that inadequate conditions in SIZO remand prisons was a systemic problem and it applied the pilot judgement procedure. The problems included overcrowding, 23 hour lock-up, no constructive activities, little contact with the outside world, very poor health care services, which produced a regime which was threatening to the maintenance of physical and mental health.

92. Dr Mitchell comments on Professor Morgan's report. Professor Morgan visited had SIZO 5 on 15th December 2014, it having been visited in November 2014 by the CPT. Professor Morgan spoke to prisoners on their own with a help of a trusted interpreter. The prison was holding 950 prisoners that day with an official capacity of 959 but the way the governor was required to divide up the prisoners meant that some areas were more crowded than others. Professor Morgan also had occupancy figures for 2014, between January and June 2014 the prison was not filled to capacity whilst between July and November 2014 the prison was over capacity but not greatly.

93. Dr Mitchell comments that Professor Morgan saw that every cell had a fully enclosed lavatory, a television screen, electric kettle and a fridge as well as a window which could be opened whilst each prisoner was supplied with a sheet, pillow, pillowcase and blanket. The prisoners have one hour of exercise each day in a small grim yard and have a hot shower once a week. The prisoners spend 23 hours a day in their cells with six to 10 other prisoners. Conditions in a punishment block would be in breach of Article 3. Professor Morgan's conclusions were that neither the CPT nor the ECtHR would find that the conditions amounted to inhuman and degrading treatment.

94. Professor Morgan also visited IK-2 Tula which was a superficial and brief visit which was not conducive to him talking to the prisoners.

95. In his conclusions Dr Mitchell does not dissent from Professor Morgan's descriptions of the general conditions in SIZO 5 but he points out that since the Professor's visit SIZO 5 has become "grossly overcrowded". As such he considers that if Professor Morgan "were to be asked to review his opinion in the light of these most recent occupancy statistics I do not think that it likely (sic) he would be able to consider the conditions of detention within SIZO 5 to be compliant with Article 3".

96. Dr Mitchell goes on to say the punishment block conditions would breach Article 3 and that he is concerned that the prisoners spend 23 hours in their cells. Furthermore he criticises as too vague the assurance given by the Prosecutor General's Office in the letter of 9th October 2015. Dr Mitchell concluded overall that if extradited Mr Korolev would face a real risk of being subjected to inhuman or degrading treatment if imprisoned.

97. The final witness is **Dr Golubok**, a lawyer practicing in the Russian Federation who had been a witness in the *Fotinova* case in 2013. His evidence was that the assurances given by the Prosecutor General or his Deputy would not bind the Federal Penitentiary Service ("FSIN") which is in charge of SIZOs and correctional colonies (for convicted prisoners). The legislation does not allow him to bind the Russian Federation in relation to places of detention for prisoners. Without a document from the Federal Penitentiary Service he could not see how the prosecutors would be able to ensure that Mr Korolev would be placed in SIZO 5 in Moscow. As to pre-trial detention, Mr Korolev could be moved between SIZOs.

98. He comments helpfully about Professor Morgan's evidence about SIZO 5 and points out that the expert said "I do not believe that prisoners currently held at SIZO 5 are unacceptably crowded. Given other aspects of their confinement they are not generously provided for". Dr Golubok comments that since Professor Morgan's visit overcrowding in the SIZOs of Moscow has got considerably worse. He had no figures for SIZO 5.

Conclusions on matters not in dispute

99. I find the Secretary of State has issued a certificate and sent that along with the request. The documents sent include all the material required by section 78(2) of the Extradition Act 2003. I find that Mr Korolev is the person whose extradition is requested, the offence alleged in the request I find to be an extradition offence and copies of the documents sent to this court have been served on the defence. The only bar to extradition being raised is that of sections 79(1)(b) and 81(a) and (b), I must decide whether Mr Korolev's extradition is barred by reason of extraneous considerations.

Conclusions drawn from the evidence

100. Senior District Judge Workman considered that the evidence he heard in the case of Mr Makhay and Mr Makarov drew a picture of a politically motivated process which amounted to a request being made on account of the RPs political opinions.

101. Mr Caldwell accepts as he must, that there was good reason to believe that Mr Makhlay and Mr Makarov would not have received a fair trial if returned to the Russian Federation.

102. There are numerous similarities between the conduct alleged against Mr Makhlay and Mr Makarov and the conduct now alleged against Mr Korolev. In both cases Toaz is alleged to have sold ammonia and urea to Nitrochem the Swiss distributor at undervalue, Nitrochem is then said to have sold it on at market prices, the profits are then said to be shared by the conspirators in Toaz and Nitrochem.

103. Whilst in the earlier case the minority shareholder was Mr Vekselberg and his company Tringal. He sold his interest of around 9% to Mr Mazepin

and his company Uralchem. Whereas in the earlier case the complainant was Tringal, it is now Uralchem.

104. There are differences between the two requests. Whereas the earlier case was an allegation of tax evasion relating to the profits made, Mr Korolev's case is an allegation of fraud. The time period of the earlier case was 2002 to 2004, whilst in the current case the period is from 2008 to 2011. In the Makhlay/Makarov case it was said that Toaz had a controlling interest in Nitrochem, now it is being said that Nitrochem has an interest in Toaz via offshore companies and Mr Zivy/Ruprecht. The loss now is said to be the whole output of Toaz valued at over US$ 3 billion.

105. I have no doubt that like Mr Vekselberg Mr Mazepin is a corporate raider. In a May 2016 report (volume 14, tab 52, page 270 onwards and particularly at page 23) written by Dr Shelley and Ms Deane, the attacks on Toaz were described as a textbook case of raiding. The two authors produce a table which shows that every known raiding tactic has been used against Toaz since 2005. These include forgery and fraud, malicious prosecutions, tax inspections, misuse of shares, misuse of the banking system, violence, dark PR and abuse of the rule of law.

106. I accept Professor Sakwa's evidence that although the name of the raider has changed, Mr Mazepin's raid is an almost exact replica of the earlier one. Mr Mazepin is attempting to bully the majority shareholders in the company into giving up their interests in Toaz in any way he can. Firstly he tried to obtain the register of shareholders to obtain their support for his own board nominee. Then he has continued Mr Vekselberg's campaign of bullying and harassment in order to take over this highly successful company.

Extraneous considerations

107. Section 81 of the Act reads as follows:

> A person's extradition to a Category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that
> (a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions or
> (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

108. On the plain wording of this section, the question for this court is whether the request for extradition has been made on account of Mr Korolev's political opinions or whether he might be prejudiced at his trial on account of his political opinions. In formulating my approach to the section, I am following the line taken by Senior District Judge Riddle in the case of *The Russian Federation v Kononko* in relation to section 81 and not the line taken by Senior District Judge Workman in the *Russian Federation v Makhlay and*

Makarov. Judge Riddle's interpretation is much narrower than Judge Workman's and in my view reflects the wording of the section.

109. I find no evidence sufficient to support this bar. Mr Korolev's political views are not in evidence and his role has never been political but an important role within a business, admittedly I find a very significant business, within the Russian Federation.

110. That is not to say there is no evidence of political interest in Toaz or in the prosecution of the owners or managers of that company. There was such interest in the events leading up to the 2009 extradition case and there is some evidence of that again in 2016. That evidence I will consider when I come on to look at Article 6.

111. This first argument in relation to extraneous considerations fails. There being no bars to extradition I must decide whether Mr Korolev's extradition would be compatible with his Convention rights within the meaning of the Human Rights Act 1998.

Article 6

112. The test I must apply is whether the defendant can show there is a real risk that he will suffer a flagrant denial of justice in the Russian Federation. *Othman v United Kingdom* [2012] ECHR 56 suggests that the breach of the Article 6 principles has to amount to the nullification of the very essence of the right. It is said that this will occur in very exceptional circumstances.

113. In the earlier Makarov and Makhlay request there was clear evidence of political interest in their extradition. The then Senior District Judge accepted the evidence of Professor Sakwa that Toaz by virtue of its size and the type of product it sells was a company of importance within the strategic industry which then Prime Minister Putin wanted to keep under State control. The regime was concerned that the then RPs were a threat to the dominance of the group close to the administration. The claim of tax evasion was merely cover for a takeover. In Professor Sakwa's view in 2008 and 2009 the prosecution was brought for political reasons seen "in the context of a struggle for the redistribution of property". (Judge Workman's judgement at core bundle 1, tab 5, page 5, paragraph 14 onwards).

114. In the earlier case Professor Bowring gave evidence of specific corruption and lack of independence in the judiciary involved in the Toaz case. That expert was also of the view that the prosecution was politically inspired because the financial interests of the ruling group in Russia were concerned. The Professor was concerned that the case would be heard within Judge Yegorova's court. She had close relations with the Kremlin and judges have complained about her interference, she has power to dismiss or pressurize the judges of her court.

115. In addition to Professor Bowring's evidence, Judge Workman had the undisputed evidence of what Judge Valyavina, a Supreme Court Arbitration

judge had said in May 2008. She said that in the summer of 2005, she had received the Toaz case from the Presiding Judge of the Second Judicial Bench that other judges did not want to touch. She was visited by Boyev who was a representative of the Presidential Administration. He spoke to her about state interests and the fact that she probably did not understand them correctly. He instructed her to annul her determinations in the case. He reminded her she had to be reappointed. Judge Workman found that it was clear that although she resisted the influence others in the Moscow City Court would not.

116. I am reminded in Professor Sakwa's chapter in The Political Economy of Russia (Chapter 4 in volume 4, tab 1, page 10) that another judge of the Arbitration Court, this time in the Samara region, Judge Kostyuchenko was sacked in March 2006. She went to the European Court of Human Rights and complained that her dismissal was as a result of her decisions in the Toaz case.

117. I have also been provided with newspaper cuttings in volume 14 in particular tabs 30 and 31 where it is said in 2015 that a judge in the Arbitration Court was pressurized into making decisions in a particular way in relation to a Toaz case (and other cases) by the Vice-Chairman of the Supreme Court of Russia, Oleg Sviridenko.

118. I have given limited weight to the press articles generally as it was very hard to establish the veracity of the reports and their origins. It seems that Toaz and Mr Mazepin have conducted successive PR campaigns via the press. I did note that in the articles Mr Vekselberg and Mr Mazepin are linked and there was very little said about Mr Mazepin's political influence other than his connection to a Duma representative.

119. If extradited the RP's trial would be heard in the Basmanny Court under the supervision of Judge Yegorova who has a reputation of giving rulings according to the prosecution's wishes. Judge Workman's views of the evidence give in relation to this judge are set out in his judgment.

120. It is argued by Hugo Keith QC for Mr Korolev that there is continuing political interest in Toaz. In relation to Mr Mazepin, the evidence from Professor Sakwa was that Mr Mazepin was famous for being state friendly and his short role as a regional deputy suggested a certain closeness to political powers. He had also had roles as Deputy President of the Russian Federation Property Fund and according to the press had been associated with Gazprom.

121. On the other hand, although more than one witness said there were political considerations at play there was very little evidence that that was currently the case. I accept Mr Caldwell's submission too that there is little evidence that Mr Mazepin is connected to the Kremlin. Professor Sakwa's view was that Mazepin had good access to politics but there was no detailed evidence of the sort there was in the earlier extradition case of Mr Markhlai and Mr Makarov. I accepted there was some evidence that there is continuing political interest in Toaz but I have concluded that there is insufficient evidence for me to find that the request for extradition was political in the sense of connected to the President or his circle.

122. In terms of the courts and the present case, Toaz has appeared in a number of arbitration courts and criminal courts. Toaz has benefited from a number of rulings in its favour in both courts. Professor gave balanced evidence that I accepted that the arbitration courts are more likely to be independent than the criminal courts.

123. Dr Gladyshev gave evidence that during an illegal takeover of a company, the police, the judiciary, the Procuracy, an official of the Investigative Committee, local, regional or federal authorities may be involved. Professor Sakwa described a dual state, and I was reminded of Professor Bowring's description in another Russian case that the Russian Federation on paper had a fully functioning legal system but that in recent times the state had been captured by people with a background in the KGB and FSB. Because of that, methods of the Soviet era continue, and judges feel it is in their interests to do the right thing. This is not to say that this happens in every criminal case, just those of interest to the state or to powerful people.

124. There was much evidence which I came to accept that in cases involving wealthy or powerful people, or one which may be of importance to the state, then a judge will be selected who will give the right decision the one that the investigators and prosecutors wish for.

125. I have a number of concerns about this request, when I consider Article 6, I set a few of them out below:

a. The lawyers' case which was the precursor to the investigation into Mr Korolev throws light onto Mr Mazepin's world. An investigator or court should question the bona fides of a complainant which launched an entirely bogus case against the same company it is now complaining about. In the lawyers' case, the allegation made by Uralchem was that the refusal of the lawyers' to provide a list of shareholders led to the loss to Uralchem of a contract to sell shares to a company called Belport and a consequential large financial penalty. The claim led to a raid on Toaz' offices and the removal of a number of commercially sensitive documents. This was a clear fishing expedition according to Mr Gladyshev. It turned out that the share register had been provided by Toaz in accordance with the legislation and Belport was a company connected to Uralchem. This claim which went to court was a Uralchem lie from beginning to end and a manipulation of the judicial system.

b. On the face of it, the expert evidence has been manipulated. A crucial piece of evidence in such a prosecution would be that the products were being sold at below market value. Firstly no expert was initially instructed, secondly the first expert instructed was not appropriately qualified but an expert in construction. His report was part copied from the internet. Thirdly, the next expert the investigators were forced to go to Mr Kazantsev prepared a report which was favourable to Toaz. This report was then withdrawn on

the basis that it had not been sent using the correct procedure. The signature of the expert had not been verified, the proper letter had not accompanied the report and the report, which had been provided by the court, was apparently unfinished. Mr Kazantsev was now on holiday and another expert should be used. Mr Zamoshkin's evidence was that the investigators did not use the report because it was favourable to Toaz and I have no doubt he is right. Fourthly the Institute which had appointed Mr Kazantsev now appointed a mother and daughter and a third expert to write the report. They found sales were under the market value in a report for the arbitration case. The investigators then appointed the same three in the criminal case. Finally during this period yet another favourable report to Toaz by a Mr Selivanov was also withdrawn (on 21st October 2014).

I accepted Professor Sakwa's conclusion that "it was clear that the raiders were intent on preventing an impartial enquiry into the substantive allegation that Toaz sold its products at less than market value. The whole case hinged on this, hence their efforts to ensure that no independent investigation was conducted". It would seem to me that the investigators are far too close to Uralchem. I was also concerned about the role of the institute. The excuse for the withdrawal of Mr Kazantsev's report seemed contrived.

c. The size of the loss (over US$ 3 billion) and the allegation that the whole of the ammonia and urea production has been stolen. It does not make sense in the context of the allegation of a sale at under value. Professor Zamoshkin said it was absurd and Professor Sakwa said it beggared belief. I questioned the investigators motive for choosing such a large amount of money when the obvious loss was the difference between the market value and the sale price of the products.

d. There is little detail to the charge. The details of what it is alleged the RP has done has to be obtained through the questions he and other witnesses are asked. The request does not say what his role was although I accept his interview in London makes it clear that he signed sale contracts for the products from December 2009 onwards. He was not part of the pricing committee which set the prices for the products and therefore it would have been helpful to have more detail of his role. There is no detail either of where the profits from the sale went to. It is alleged that the co-conspirators benefited but it is not said how Mr Korolev gained from the sales.

e. The response of the Swiss Attorney General to the Attorney General of the Russian Federation, dated 6th October 2015 (volume 13, tab 84, page 244 onwards), makes it clear that the Russian authorities are being misinformed about the size of Mr Zivy's shareholding in Toaz. Instead the Swiss authorities confirm that Ameropa Holdings have a 12. 965% share in Toaz. There must be

an inference that the misinformation is coming from Mazepin.

f. Professor Sakwa's evidence was that the transfer of the criminal case to Basmanny District Court in Moscow was a good indicator of an unlawful corporate raid. I accepted his evidence. It may well have been a reaction to the successful (for Toaz) conclusion of the lawyers' case as suggested by Mr Zamoshkin. It may show that the Moscow Investigating Committee takes an interest in the case. Mr Caldwell argues that a transfer to Basmanny was like a transfer to Southwark. Against that of course is that a fraud case out of London is not going to be moved to London necessarily. The transfer to Basmanny Court is another concern for this court.

126. I have not considered above all of Mr Keith and Mr Watson's criticisms of the investigation and the decisions made by the courts. I do not consider the decision to impose a measure of restraint remotely surprising and I did not accept what Mr Korolev said in interview when he explained that in October 2013 he was still on the business trip which started on 14th February 2013. I was not able to decide whether the decisions taken to date by the Basmanny Court were suggestive of support by that court for Uralchem. Mr Keith and Mr Watson rely on the search of Norton Rose but I was not convinced it was well outside the discretion given to an investigator in the Russian Federation. Likewise the decision that no 2014 dividends should be paid to shareholders with the exception of Uralchem, cannot be judged without knowing who the shareholders are. It may well be that the other shareholders are implicated in this alleged fraud. I am not able to judge whether the suspension of Mr Korolev from the board at Toaz was a sign of support for Uralchem. On the one hand he is being investigated for a serious offence, on the other it is perhaps pre-judging the issue. I accept the points made by Mr Keith and Mr Watson that there are parallels with the Yukos case but there are major differences too and I do not find the comparison helpful when considering whether I find there is a real risk of a flagrant denial of justice in this case.

127. More generally I am urged by Mr Keith and Mr Watson to consider the current authoritarian political climate, the well know weaknesses in the judicial system. Crucially too, I accept that there is evidence that judges have come under pressure in relation to earlier Toaz cases when their independence has been threatened. The weaknesses in the system include a criminal procedure that favours the prosecution, the different status of defence evidence, which in this case is of particular importance. There is no sense that the courts will protect Toaz from an unscrupulous raider such as Mazepin. The sham Belport contract used to put pressure on Toaz should have led to the investigators questioning Uralchem's motives. The expert reports finding that no sale at under the market value had taken place should not have sent the investigators to find an expert who would come to the opposite conclusion. It should have led to a robust questioning of the prosecution case. Instead of which the investigation and prosecution continues and the case has now been moved to a court with a lamentable reputation for independence with a judge at the helm who will not hesitate to ensure the judges of her court do what is

considered the 'right thing'. In their approach to this case, I have concluded that the right thing as far as the investigators are concerned will be the conviction of Mr Koralev.

128. In conclusion, I find that that the background to this extradition request includes a weak case without the crucial evidential foundation of a robust expert report, a charge which grossly inflates the complainant's loss, a complainant which is corrupt yet powerful, evidence of investigators who appear to be too close to the complainant, an accused with assets the complainant wants to obtain, a long history of similar attacks on the accused, the suggestion that a transfer to a new court was as a result of another court's decision in favour of the accused, evidence of a lack of independence of the judges at that new court, the suggestion that the size of the company and its dominance in the market place will lead to a political interest in the outcome of the prosecution. Overall this court has come to the conclusion that there is ample evidence that Mr Korolev is a pawn in a corporate battle. The combination of these factors leads me to find that if returned to the Russian Federation there is a real risk that Mr Korolev will face a flagrantly unfair trial.

Article 3

129. The test for this court to apply is whether there are substantial grounds for believing that the RP, if extradited, would face a real risk of being subjected to treatment contrary to Article 3 (*Saadi v Italy* (2009) 49 EHRR 30). The burden on the defence is less than on the balance of probabilities but the risk must be more than fanciful. As against that there is the strong rebuttable presumption that in the case of a member of the Council of Europe that the state will abide by its obligations. *Krolik v Polish Judicial Authorities* [2013] 1 WLR 2013 suggests that something "approaching an international consensus" is required to rebut the presumption.

130. Mr Caldwell relies on what he says is an assurance given by the Russian Federation that if returned the RP will not be held in conditions which breach his Article 3 rights. The European Court of Human Rights' in its decision of *Othman (Abu Qatada) v UK* (2012) 55 EHRR 1 listed a number of matters a court may wish to look at when considering the weight to give to any assurance received from another country. The court is to assess firstly the quality of the assurances given and secondly whether they can be relied on. Paragraph 189 sets out a list of considerations.

131. The defence have made much of the decanting of prisoners a couple of days before Professor Morgan's visit to SIZO 5. Mr Caldwell for the RS points out that the CPT visit had happened in November and that the SIZO remained at that lower capacity for nearly a year afterwards. What concerned me the most about the sudden emptying of the prison was that when Professor Morgan asked about this he was not told the truth. That would be a concern when considering any assurance in relation to prisons given by the RS.

132. In terms of Article 3, relying on the evidence of Professor Morgan's findings in relation to SIZO 5 in December 2014 and Dr Mitchell's evidence

and the Russian Federation's statistics obtained since, that although there are many positive aspects to the prison conditions in that SIZO, it is clear that the conditions have deteriorated since December 2014 and have become grossly overcrowded at the same time as prisoners are locked up for 23 hours a day. I find that if returned to SIZO 5 there are substantial grounds to believe that the RP would face a real risk of inhuman and degrading treatment. I find that the assurance given in the letter of 9th October 2015 by the Prosecutor General's Office that Mr Korolev will not be subjected to inhuman or degrading treatment or punishment is too vague. It does not comply with the Othman principles.

Abuse of process

133. In the light of my findings in relation to Article 6 and 3 above I do not turn to the abuse of process argument put forward by Mr Korolev.

Senior District Judge (Chief Magistrate) Emma Arbuthnot
8th December 2016