IN THE WESTMINSTER MAGISTRATES’ COURT

BEFORE SENIOR DISTRICT JUDGE (CHIEF MAGISTRATE)

EMMA ARBUTHNOT

BETWEEN

THE RUSSIAN FEDERATION

Requesting State

V

ANDREY VOTINOV

Requested Person

JUDGMENT

Index

Introduction paragraph 1

Issues raised paragraph 4

Requesting State’s allegation paragraph 5

Other frauds alleged paragraph 6

Evidence paragraph 7

 Evidence – the Russian Federation paragraph 10

 Evidence – the Defence paragraph 38

Submissions paragraph 148

Findings paragraph 149

Conclusions paragraph 185

 Extraneous considerations paragraph 189

 Article 6 paragraph 194

 Article 3 paragraph 204

 Abuse of process paragraph 212

 Decision paragraph 213

Introduction

1. The Russian Federation (“Requesting State” or “RS”) seeks the extradition of Andrey Votinov (“Requested Person” or “RP”) in relation to an allegation of fraud. The request has been properly certified by the Secretary of State (in accordance with section 70 of the Extradition Act 2003 (“EA”)). Mr Votinov was arrested on 3rd April 2017 and later released on conditional bail.
2. The full hearing took place between 12th and 16th March 2018 followed by one day of evidence on prison conditions on 18th May 2018. I received written submissions in the weeks that followed. This judgment was delivered on 28th June 2018.
3. The Russian Federation was represented by Peter Caldwell leading Rebecca Chalkley whilst Hugo Keith QC leading Ben Watson represented the RP.

Issues raised by RP

1. The issues relied on by the RP to argue against extradition are extraneous considerations (sections 81(a) and (b) of the EA), Articles 3 and 6 (section 87) and abuse of process. The RP contends that the proceedings against him are politically motivated and are being pursued by a Mr Igor Sechin, the Chief Executive of Rosneft who is close to President Putin. He argues that Mr Sechin has targeted the RP as proved by a document called ‘Plan of Activities’ of April 2015. According to Hugo Keith QC, the RP refused to be part of a corrupt plan supported by Mr Sechin and stood against Rosneft’s political support for the regime. Article 3 is engaged and a visit to a prison and a remand centre by an expert instructed by the RS and a witness on behalf of the RP has taken place. Assurances in relation to where Mr Votinov will be held fall to be considered. Mr Keith finally relies on Abuse of Process.

Requesting State’s allegation

1. The fraud alleged by the RS is a straightforward one. Mr Votinov who was the General Director of RN-Taupse Oil Refinery (“NPZ”), a company owned by Rosneft, is said to have agreed to pay monthly rent on behalf of NPZ for an office building which was under development and that it was not using. These payments were said to have taken place between September 2013 and September 2014. The unfinished office building was owned by Vse Lyudi Ravny Company Group (“VLR”). This company had been founded and controlled by the RP and it had gone through the hands of his sister. NPZ had paid a total of 128,383,200 roubles for the rent (very approximately £1.5million). This amount was later accepted to be 156,912,800 roubles. Both Mr Votinov and Mr Firichenko of VLR were said to have known that the building was not ready for occupation yet the payments continued and the senior managers at Rosneft were defrauded as a result.

**Other frauds alleged against Mr Votinov and others**

1. Although only one alleged fraud underlies this request, the papers and evidence make reference to at least three others which are being investigated or prosecuted in the RS. A second fraud is alleged in relation to payments for renting the land on which the unfinished office building subject of this request was situated; and two others involving a separate company, Graviton, which was alleged to be a contractor paid by NPZ for firstly removing a mooring and then re-instituting it. The allegation in the Graviton cases is that the mooring was never removed and yet NPZ, whilst Mr Votinov was the general manager, paid for the work.

Evidence

1. I had many volumes of evidence produced by the defence as well as the request relied on by Peter Caldwell. There are helpful joint hearing bundles and a core bundle A, where the Extradition Request is set out at tab 6 after the written submissions. I have received other written submissions including on Article 3 which are not in the core bundle.
2. I was also much helped by a chronology of agreed facts which the court received on 4th June 2018. This set out an unusual series of events which took place after 8th February 2018 when I received what is undoubtedly a false statement in a document from a Major-General of the Main Investigative Directorate of the Investigative Committee of the RS for the North Caucasus Federal District. The Major-General’s statement is an important factor in the decision I have made.
3. I heard evidence from Professor Sakwa, Mr Schender, Mr Yarchuk, Mr Dyatlev, Dr Gladyshev, Mr Golubok and Professor Morgan. The latter two gave evidence on prison conditions.

Evidence - the Russian Federation

1. The only live evidence I heard given on behalf of the Russian Federation was that of the expert witness Professor Morgan. He visited the detention centres SIZO 1 and IK9 with the defence witness Mr Golubok in April 2018 and I have set out their observations below.
2. In term of the documentation I received from the RS, I had the Ruling to institute and commence criminal proceedings dated 30th November 2015 (core bundle A tab 6 page 6). The Head of the Investigation Directorate of the RF Investigation Committee for the Krasnodar Territory of the RS, said he had examined a report made by Mr Volovodov, a Captain of Justice, the “Investigator for Particularly Important Cases”. He set out the Captain’s findings.
3. A plan was made to steal the funds of NPZ by paying for a lease of a building which was not fit for use. Mr Firichenko of VLR signed the lease on behalf of the owner whilst Mr Votinov told a Mr Kiryanov to sign it on behalf of NPZ. This was done by the RP “abusing the trust of the top management of NK Rosneft OJSC, acting out of selfish motives”. Funds were then paid out by the company to VLR. 128,383,200 roubles was spent which is defined as “an especially large amount” which Mr Firichenko stole “and disposed as he thought fit”.
4. An Order on withdrawal or transfer of the criminal case dated 30th November 2015 from the city of Essentuki is at page 9 of the same bundle. At the second paragraph it says that because the investigation of the “specified criminal case is very complicated, and interregional nature of the crime performed and necessity to perform investigation measures on the territory of various subjects of the Russian Federations”, the case will be transferred from the Captain of Justice Volovodov in Krasnodar to the Lieutenant Colonel of Justice Zakharov of the North Caucasian Federal District.
5. On pages 11 and 12 is the Ruling to place the RP on a wanted list followed by the order to place him on the international wanted list at page 13.
6. The indictment dated 15th December 2015 follows at core bundle A tab 6 page 15, the findings of the Lieutenant Colonel of Justice Zakharov in Essentuki are set out, he makes the allegations set out above. An order of detention dated 23rd December 2015 made by a Judge of Essentuki City Court is at page 19. The investigator applied for detention, on the basis that the RP was willfully escaping from the RS, avoiding the investigation, engaging himself in criminal activities and hampering criminal proceedings. The RP’s defence lawyer argued against the application but the court ruled against the RP.
7. The relevant sections of the Russian Federation Criminal Code are also in core bundle A tab 6 at pages 28 to 31.

Assurances

1. A V Gutsan, the Deputy Prosecutor General of the Russian Federation gives an assurance on 15th August 2016 (core bundle A tab 6 page 4) that the RP will not be subject to torture, cruel, inhuman and degrading treatment or punishment. The Prosecutor General’s Office guarantees that by bringing the prosecution it is not meant to persecute the RP on political grounds or on the grounds of political opinion. If extradited, Mr Votinov will be held at a prison which will meet standards set by the Convention. Embassy officials will be able to visit him at any time to observe the guarantees given by the RS.
2. At core bundle A tab 7 page 68 is a letter from the RS Prosecutor General’s Office to the Extradition Unit of the CPS. Dated 27th November 2017, N R Yusifov, the Acting Head of the Extradition Department, General Department of International Legal Cooperation, guarantees that Mr Votinov would be held in the Federal State Entity “Investigative Isolation Ward No. 1” in a detention centre known as SIZO1 in the Kabardino-Balkarian Republic whilst on remand. As of 1st October 2017, he said there were 374 detainees in a prison that can hold 522.
3. As for where he would be held if given a prison sentence, Mr Votinov would be held in a correctional colony in Krasnodar because he is registered there. He would go to Correctional Institution No. 9 known as IK-9. As at 1st November 2017, there were 1058 detainees whilst the prison can hold 1202 convicted prisoners.
4. Mr Yusifov, explained that four square meters per person is what Article 23 of the Federal Law of the Russian Federation allows for prisoners on remand. Mr Votinov was guaranteed a bunk and personal space of no less than four square meters. This will allow him to move freely among the furniture. The Acting Deputy Head goes on to confirm the guarantees that the RP will not be subject to Article 3 breaches and that when he is kept in prison he will be subject to standards which are compliant with the Convention. Officials from the British Embassy will be able to visit him to check that the conditions are being complied with. Furthermore, the Prosecutor General’s Office will “supervise the observance of Mr A V Votinov’s rights, if extradited and the compliance of detention conditions with the provisions of the international law and the Russian applicable legislation”.
5. A letter from Mr Gorlenko, the Deputy Head of the Extradition Department in the Prosecutor General’s Office dated 7th February 2018 (core bundle A tab 8 page 95) contradicts the first assurance in relation to the pre-trial detention centre only. It says that during the pre-trial investigation Mr Votinov will be held under remand centre regime at the Correctional Colony No. 14 in the Krasnodar Region.
6. The RS’s final position that the RP would be held in SIZO 1 is set out in a letter dated 7th March 2018 from Mr Yusifov (core bundle A tab 18). Mr Votinov would have an individual sleeping cell, not less than 3 square meters of floor space for his own use and ONK will exercise public control over the conditions of his detention.
7. SIZO 1 and IK 9 were visited therefore in April 2018 by the prison expert Professor Morgan on behalf of the RS accompanied by Mr Golubok a defence lawyer and witness.

Information signed by Major-General of Justice Tkhakakhov

1. At core bundle A tab 8 page 74 of the bundle is the 8th February 2018 document in reply to a report of the defence expert Professor Sakwa. This explains the role of the Russian Federation Investigation Committee. At page 78 Major-General of Justice, M A Tkhakakhov the Head of Criminal Investigation of the Main Investigation Directorate of the Investigative Committee of the Russian Federation for the North Caucasus Federal District explains the investigation they are conducting is into a “multi-episode” criminal case against a group of people including Mr Firichenko and Mr Votinov (and four others). They are investigating numerous thefts of large amounts of funds, property of Rosneft and NPZ.
2. The first case being investigated is number 15900601. It was opened on 30th November 2015 and is the subject of the current request involving the rental of an office building. A second case 16190513 opened on 27th January 2016 was a fraud alleged against Mr Firichenko and Mr Votinov in the sum of 156,912,800 roubles. The third case number 41702007704000001 (sic) was opened on 13th February 2017 and alleged that Mr Votinov and VLR aimed to derive benefits for both against the interests of NPZ by causing damage by the company incurring unsubstantiated expenses of 2,751,158,916.26 roubles in favour of VLR.
3. Crucially Major-General Tkhakakhov makes this statement at page 79. “On September 29 2017 Tuapse City Court of the Krasnodar Territory issued a judgment of conviction against A N Firichenko for the crimes on which criminal cases Nos. 15900601 and 16190513 were opened, said judgment having come into effect. The court sentence established the fact that A V Votinov and A N Firichenko committed the crimes, and gave a prejudicial evaluation of criminal actions of A V Votinov, since he committed the crimes in association.”. This part of the Information is false.
4. The Information goes on to make the valid point that Professor Sakwa’s expert reports contain argument on the general social and political situation in Russia which does not affect the competence of the RF Investigation Committee.
5. The following day on 9th February 2018 the defence served the Firichenko Tuapse Court verdict contained in a substantial judgment delivered on 29th September 2017 as well as the statement of Mr Dyatlev, Mr Firichenko’s lawyer, who exhibited it.
6. During the hearing between 12th and 16th March 2018, I asked for further information from the RS in relation to the letter of 8th February 2018. One specific point was in relation to the Major-General’s comment that the Tuapse Court (in the Firichenko case) had established that Mr Votinov and Mr Firichenko had committed the crimes and “gave a prejudicial evaluation of criminal actions of AV Votinov, since he committed the crimes in association”.
7. The CPS asked the RS for further information and received replies which were served on 14th May 2018.

Informations signed by the Lieutenant-General of Justice O A Vasilyev

1. The first response was dated 11th April 2018 and was from the Head of the General Investigative Committee for the North Caucasus Federal District, the Investigative Committee of the Russian Federation. The Lieutenant-General of Justice Mr Vasilyev who signed the information appeared to be of a higher rank than the Major-General who had sent the 8th February 2018 document. The new response said that the Investigative Committee had filed a submission with the Deputy Prosecutor General of the RS for leave to appeal the Firichenko judgment. The Prosecutor General’s Office says that it would therefore be “inappropriate to provide any comment in this regard” (bundle H tab 8 page 72).
2. A second response dated 8th May was served on 14th May 2018 (bundle H tab 8 page 76). This was a further document from the Lieutenant-General of Justice Vasilyev. He said that in the view of the investigation, the crimes had been committed by Mr Votinov and Mr Firichenko acting together. The cases were separated as Mr Votinov had absconded.
3. Lieutenant-General Vasilyev then attempts to explain what the Major-General had said in the information of 8th February. “The earlier sent information indicated the ‘prejudicial sense’ of the aforesaid court judgment from the perspective of the prosecution, as long as the pretrial investigation against Mr AV Votinov has not finished, and the investigation has not obtained the facts, which could have spoken for his innocence, including in the course of examination of particular provisions of the judgment against Mr Firichenko.”.
4. On 11th May 2018 the Cassation Submission (appeal) went from the Prosecutor’s Office of Krasnodar Krai to the Presidium of the Krasnodar Krai court (bundle H tab 8 page 80). It said that the Prosecutor’s Office considered the verdict of the court in Firichenko did not accord with criminal procedural law and therefore the verdict should be overturned.
5. This document makes it plain that a conspiracy to steal is alleged and that officials in Rosneft were deceived. It says that the court rejected the allegation of that an offence was committed by a group of persons and furthermore “the court worded the verdict in a way that indicates AV Votinov is innocent of committing the offences that he was charged with together with AN Firichenko”. Tuapse Court had prejudged the case against Mr Votinov who did not participate in the trial. The verdict cast doubt on the conclusions of the investigation authorities regarding Mr Votinov’s involvement in the offence. “Thus the court has significantly violated the rights of the prosecution and deprived it of the possibility to conduct criminal proceedings against AV Votinov according to the procedure stipulated by the criminal-procedure law.”.
6. In brief the finding in relation to Mr Votinov was not open to the court to make as he was not being tried alongside Mr Firichenko.
7. The document concludes with a request that appeal proceedings should be launched and the submissions sent reviewed by a Cassation Court. The verdict in Mr Firichenko’s case should be overturned.

Defence evidence

1. I heard from Professor Sakwa who had provided a report dated 27th September 2017 at tab 12 of the core bundle and two volumes of exhibits. His evidence was about the general political situation and then about Mr Votinov’s position in particular. Unfortunately his evidence that Mr Votinov was resisting the political machinations of Mr Sechin was based on a proof from the RP that was not provided either to Mr Caldwell or to the court. I was concerned that this only became clear in cross-examination. It meant I could give very little weight to some of his conclusions based as they were on at least one document, Mr Votinov’s instructions, that the court had not seen.
2. On evidence the court had seen, Professor Sakwa was able to say that Igor Sechin was behind the prosecution. He explained that Mr Sechin is closely connected to President Putin, he runs Rosneft and has been involved in corporate raiding on various companies. He is said to have put pressure on Basneft. In the Yukos case he is said by Mr Khordovsky to be behind his criminal prosecution. He is part of the *siloviki* who are a powerful caste who have taken on the role to defend the State. He said they have suborned the judicial system, in particular the Investigative Committee of the Russian Federation. Mr Sechin is a very powerful man who recently had entrapped a government minister and had him arrested for corruption after the latter had brought money in a briefcase to a meeting with Mr Sechin. When Mr Sechin had been called to court to give evidence he had refused to do so on four occasions because he was too busy.
3. The professor explained that there are some decent judges in the system but a person could not get justice when there were political interests at stake. He explained that there are prosecutions to order, false allegations aimed at the managers and owners of a company, made to get the assets of a company. The results of these activities are cases which have weak evidential support, obscure charges which often are fraud charges and a powerful complainant.
4. The professor spoke about Basmany courts which are next door to the Prosecutor’s office. It is a particularly powerful system in Essentuki and Tuapse. The fact that the head of investigation in Krasnodar, a man of power and of high esteem, had a hand in the prosecution meant that it was very unlikely that a court would be able to resist the pressure.
5. In this case Professor Sakwa pointed out that the investigation started after a plan of activities was produced before July 2015. What then happened followed the trajectory predicted in the plan of activities. The expert pointed to signs of undue haste in the prosecution. The fact that Mr Sechin was behind the prosecution was highly significant.
6. I heard evidence from Mr Schender (statement dated 8th March 2018 at bundle A, tab 17 page 686 onwards) who was the defence lawyer for Mr Yarchuk who had moved to Austria. The RS had made a request for the extradition of Mr Yarchuk.
7. The allegation made by the RS was that Mr Yarchuk was involved in a tax fraud involving his company Graviton (which was a contractor working for NZP and Mr Votinov). Mr Schender submitted to the Public Prosecutor in Vienna that the request was politically motivated as part of an attack on Mr Votinov. He also argued that extradition would breach his Article 3 and 6 rights.
8. The extradition request involved a doubling in the amount said to have been defrauded based on an expert report produced over a weekend. The lawyer’s view was that the increase was to avoid the expiry of a limitation period. As is clear from the ruling, the Austrian court found the request inadmissible. This was not a finding based on Articles 3 and 6 but because the Russian Federation had been asked on three occasions for an explanation of the increase in the amount said to be defrauded but received no reply. The Austrian Regional Court ruled that the extradition was inadmissible. The ruling is exhibited as RS/2, at core bundle A tab 17 page 693.
9. Mr Schender explained that the criminal allegations against Mr Yarchuk were only made after civil claims were launched by him (via his company Graviton) against Rosneft.
10. Alexander Yarchuk (statement dated 8th March 2018 at bundle A, tab 16 page 560 onwards) was Mr Schender’s client. He said he was being targeted for extradition because of his association with Mr Votinov. Mr Votinov was the primary target. Austria had refused to extradite him in relation to a tax case involving a mooring paid for by NPZ (this is known as the second Graviton case).
11. He spoke about four cases, the first Graviton case in relation to a mooring; the second Graviton which was a tax case; the 1st VLR which related to rental for an office block (the request in front of this court) and had a co-defendant Mr Firichenko along with Mr Votinov and finally the second VLR case concerned the land rental for the same block in which Mr Firichenko was the only accused. The two VLR cases were merged and then severed to enable Mr Firichenko to be tried alone. He did not know whether Mr Votinov was an accused in the second VLR case.
12. The grounds for Mr Yarchuk resistance to the RS’s request for extradition are set out above.
13. Mr Yarchuk explained that the first Graviton mooring case was brought against him after a complaint by Mr Igor Sechin of Rosneft to the Minister of Internal Affairs of the Russian Federation, dated 26th August 2015. The letter is at core bundle A tab 16 page 626. Mr Sechin said that after an internal audit conducted by Rosneft, it had found that a payment of 137.9 million roubles by the company NPZ, for the decommissioning of a mooring, to a sub-contractor Graviton had been made without the works being carried out in full. Mr Votinov is not named in Mr Sechin’s letter. Mr Yarchuk suggested that it would be unusual for Mr Sechin to write a letter about an ordinary case such as this. In relation to these allegations Mr Yarchuk believed they were made up and were politically motivated.
14. Mr Yarchuk produced an information note written by Police Lieutenant-Colonel Milhailenko from the Department of Economic Security and Counteracting Corruption in the Main Ministry of Internal Affairs of Russia Department for Krasnodar Krai. There is sets out the allegation that the contract was signed on behalf of NPZ by Mr Kyrianov and approved by Mr Kaverov. The note says that Mr Votinov was in charge of overall management of the company at the time, between 2013-2015 (core bundle A tab 16 exhibit AY/9 page 680). Mr Yarchuk said the note was aimed at getting Mr Votinov back to the Russian Federation when in fact Mr Votinov had nothing to do with the mooring contract.
15. Mr Kaverov, who had gone to Slovenia had been accused of the mooring fraud but Slovenia refused the Russian Federation’s request to extradite him.
16. Mr Yarchuk explained that in the Russian Federation commercial dealings were regularly being transformed into criminal allegations. NPZ’s contractual relationship with VLR and Graviton gave an opportunity to Rosneft’s auditors and “the authorities” to find crimes in which the RP could be implicated. Graviton and VLR were owed substantial sums by Rosneft and the bringing of charges against Mr Votinov and the others enables Rosneft to avoid paying what it owes.
17. NPZ owed about 7 billion roubles to Graviton in 2014 and 2015 and failed to pay. A negotiation took place and an agreement reached for a discount for the works done but Rosneft did not pay up. Graviton started Arbitrajz proceedings in relation to the debt. Then meetings were held between Graviton and NPZ, the last of which was recorded during which Mr Sechin’s name was mentioned. The court had the transcript of the conversation at core bundle A tab 16 AY/5 page 637 onwards. The Graviton representative makes it clear to the Rosneft Head of Department that they cannot afford to give Rosneft a discount as they are on the verge of bankruptcy.
18. The recording includes some threats from a Mr Krilov at Rosneft towards Mr Barsov of Graviton. At page 80, the Rosneft Head of Department says that if Mr Sechin gives the order “they will find a way to get everyone”. He repeatedly tells Mr Barsov that he is underestimating the consequences. Referring to Mr Yarchuk he says that just because he has hidden himself in Europe, does he think that “nobody is going to find him”. He speaks about appropriate orders “will be given to the appropriate security structures”. All of this is taken out of context but from time to time the conversation about the financial arrangements did become threatening.
19. Mr Yarchuk came to believe he was being threatened and the document (the plan of activities at tab 16, AY/17 page 670 onwards which was approved by the Chairman of Rosneft I. I. Sechin), was found in Tuapse when an audit was being carried out on the works completed. The events and activities described in the document then took place.
20. Mr Yarchuk said that eventually his company reached a settlement with Rosneft and as one of the conditions of the settlement his company made a 132million roubles loss in relation to the mooring. He said they paid as they were being persecuted and would continue to be so if they did not come to some agreement. In exchange for the settlement, it was said that criminal proceedings would be stopped against them. This was something that Mr Sechin as director of Rosneft could do. In cross examination he was not able to produce the settlement document to Mr Caldwell as it was too confidential for him to do so. The document had a confidentiality agreement but he could not even say who were parties to that agreement. This certainly weakened the evidence he had given.
21. An important witness for the defence was Mr Dyatlev (tab 13 page 273). He had represented Mr Firichenko between December 2015 and September 2017 during the proceedings taken against him by the Russian Federation. Mr Firichenko was a co-defendant of Mr Votinov’s and had been tried by Tuapse Court in Krasnodar Krai. The men were said to have committed a fraud in relation to the rental of an office block. Mr Votinov headed the oil refinery and Mr Firichenko the company that the building was leased from. A second case concerned a fraud alleged in relation to the piece of land on which the office block was situated.
22. At his trial in Tuapse, Mr Firichenko had been acquitted of the more serious frauds under section 159 but convicted of causing pecuniary damage contrary to section 165 of the Criminal Code of the Russian Federation.
23. Mr Dyatlev explained what he called the procedural violations that had taken place. He did not complain about them as the courts in the Russian Federation systematically reject such complaints. He spoke about the acquittal rate and pointed out that of 950,000 defendants who were tried in 2017 only 3000 were acquitted. In Krasnodar Krai 8600 were convicted and only nine people were acquitted.
24. In relation to the allegations made against Mr Firichenko and Mr Votinov, the original decisions were made by high-ranking investigators. The case was moved between regions in what he said was an amazing way. The procedural chronology is set out at bundle A, tab 13, page 4, paragraph 13.
25. The investigation decisions were transferred from Krasnodar Krai to Essentuki back to Krasnodar, then to Essentuki back to Krasnodar again when the distance between the two cities is over 400 km. The witness would have expected the papers to be transferred on each occasion. In one and a half hours, investigators based in those separate areas were submitting documents which became part of the file, all of this happening on 30th November 2015 when the system was not digitalized. In about one and a half hours, the criminal case went through the hands of five high-ranking investigators. Mr Dyatlev’s assumption was that the file must have been falsified. There were other peculiarities in the procedures adopted by the investigators which are covered in his evidence. He fruitlessly complained to Tuapse Court about some of the procedures.
26. Mr Dyatlev said the reason given for the transfer of the case that it was a case of particular complexity and was an interregional crime which needed to be investigated in other areas of the Russian Federation, was untrue. He said he did not think the case was of huge complexity, the narrative was simple and clear and it took place in one town Tuapse in one area, Krasnodar.
27. After his arrest Mr Firichenko was taken 500 kilometres away to Essentuki. He was questioned there without his private lawyers which Mr Dyatlev believed was to intimidate Mr Firichenko. A bail hearing took place at Essentuki City Court in the absence of his private lawyers despite the fact that the court had been told they were in the court building. Mr Firichenko who was a disabled ex-serviceman with a family and no convictions was not granted bail. An appeal to the Stavropol Krai Court against that decision failed.
28. Mr Dyatlev pointed out the investigators had asked for a remand in custody; in 15 years of practice he had never known a court to disagree with the measure applied for by the investigator.
29. Mr Firichenko remained in custody from January to October 2016. He was moved needlessly to five different penitentiaries. He was held in one for 100 days, called Vladikafkaz, which had a bad reputation and was usually the place where alleged terrorists or murderers were held. He should have been held there up to ten days so it was in breach of the law as it was not a SIZO. He spent most of that time in solitary confinement but fortunately was able to see his lawyers two or three times a week.
30. He assumed that the investigation officer made the decision as to where Mr Firichenko should be held. The impact on Mr Firichenko was that he became frightened.
31. The lawyer explained they made 20 submissions to the investigation officers but they refused to provide the filed reports to them when they should have done He said he struggled to explain why they breached Mr Firichenko’s rights in that way. During the investigative stage he put in 50 motions on behalf of his client but none were answered. After the pre-trial stage about 20% were responded to. Although the lawyer made complaints to the prosecutor’s office, they were ignored.
32. Mr Firichenko was then visited by the investigator with another defence lawyer and they tried to persuade him to sign a document saying that he had familiarised himself in half a day with a file containing 21 expert reports. The only reason he signed was that he had not seen his wife for a year and he wanted to see his children.
33. In summary he did not think the investigation was lawful. He thought NPZ was trying to confiscate properties belonging to Mr Firichenko out of greed. What started out as a commercial dispute became a criminal investigation. NPZ was leasing the property and paying for it, it then stopped paying and so Mr Firichenko went to the Arbitrajz court to get an order that NPZ pay the money it owed. Quite soon afterwards he ended up in custody and a criminal case was brought against him.
34. In terms of the way he was treated in custody, his wife was not able to see him between 1st December 2015, when Mr Firichenko was arrested and December 2016.
35. Finally, Mr Dyatlev produced the judgment of the court in Mr Firichenko’s case where he was sentenced for offences contrary to Article 165 of the Russian Federation Criminal Code having been acquitted of the section 159 offences (statement bundle A, tab 14 page 349 onwards, judgment at tab 14 i page 363).
36. The judge of the Tuapse City Court in Krasnodar Krai in his verdict said that the witnesses did not confirm the existence of any improper links between NPZ, Mr Firichenko and Mr Votinov although the court found that Mr Firichenko had misled Mr Votinov. A finding was also made that neither Mr Firichenko nor Mr Votinov profited from the agreements personally.
37. Mr Dyatlev said that although his client should have been found not guilty on the findings of fact made, this would have caused problems to the investigation, so it was his view that this explained why his client was convicted of the lesser offences and given a sentence which allowed him to leave court freely.
38. Mr Dyatlev was asked about the assurance given in February 2018 by Major-General M A Tkhakakhov, the Head of Criminal Investigation Division, Main Investigative Directorate of the Investigation Committee of the Russian Federation for the North Caucasus Federal District (bundle A tab 8 page 79). The lawyer said it was completely untrue to say that the court had found Mr Votinov had committed any crime and also it was completely untrue to say that the crime Mr Firichenko had been accused of had been committed with Mr Votinov. He directed this court to look at the verdict on the pages in the transcript of the judgment he had produced.
39. He went on to explain that as long as the verdict had not been appealed then Mr Votinov could not be accused in relation to the contract said to be a fraud. Mr Dyatlev ominously said that he could not affirm that the Russian Federation would not come up with something new, especially in view of the lies in the assurance. As it turned out he was quite right in his assessment.
40. Mr Dyatlev said he had contacted Mr Votinov’s lawyers recently who had said that the investigation in relation to the leases was not closed, and other investigations were being joined including one about the mooring.
41. In cross examination Mr Dyatlev said that the loss alleged was 156 million roubles for the rental payment for the building and 344 million roubles for leasing of the land on which the building was situated. This was the money paid to VLR by NPZ.
42. The judge in Mr Firichenko’s case considered the prosecution assertion that Mr Votinov was involved dishonestly in the theft of the property. The court had the full file on the status of the company including in relation to the ownership of the land. The court had decided that the relationship between the VLR and NPZ was no different to the relationship between NPZ and other companies. The judge concluded that the lease payments were used by VLR on the building leased by NPZ for furniture etc.
43. Mr Caldwell asked him to confirm that the prosecution had not appealed the decision nor had the judge been disciplined as far as he was aware. Of course the verdict of the court was appealed after the witness had given evidence.
44. In re-examination he pointed out that he had given notification of the need for various witnesses but that the court had not summonsed them. They had to bring ten or 12 people to court themselves. The defence proved that the lease payments were used by VLR to pay for furniture etc. for NPZ’s needs.
45. In relation to Mr Firichenko’s moves in the prison estate, the witness said that the number of movements exceeded what would normally be expected and that places to which he had been moved were much worse than usual. According to the law the investigating officer is the only one who can make a decision to move the prisoner.
46. I heard from Dr Gladyshev, a Russian lawyer, who had represented Western and Russian companies in the Russian courts and gave advice on issues of criminal law and criminal investigations. Dr Gladyshev had acted as an expert witness in a number of extradition cases and also had given expert opinion on Russian law in a number of countries. He relied on his report dated 28th September 2017 in bundle A tab 10 at page 114 onwards. He described the Russian criminal justice system and analysed the case against the RP.
47. His conclusions at page 211 paragraph 448 onwards were that the criminal justice system was institutionally biased in favour of the prosecution. He considered the case against Mr Votinov was an abuse of process where the key statutory document, the Order to involve a person as accused, omitted mandatory information. He had seen contradictory information from the civil courts which led him to believe that it was not clear that the RP had committed any crime. The indictment unlawfully did not set out the deception or abuse of trust alleged. He found the request to be a case of “perfunctory and incomplete form filling, rather than genuine procedural documents in a legitimately pursued criminal case”. He said that the worst systemic weaknesses were unlikely to be counterbalanced by “fair trial considerations”. On the contrary, “both the investigators and the courts have so far exhibited a readiness to go the extra mile to secure the conviction of Mr Votinov in disregard of the basic rules of procedural fairness” bundle A page 212, paragraph 452.
48. He spoke about a number of issues including the independence of the judiciary which he says has diminished.
49. In relation to the investigation of the case against Mr Votinov, the head and mid-levels of the Investigative Committee of Russia (“ICR”) are appointed by the President of the Russian Federation whilst the police (MIA) comes under the control of the Ministry of Interior of the Russian government. The ICR is regarded as an arm of the President. He would have expected in a case of this size that the MIA would have investigated and not the ICR. The ICR investigates cases that are of political significance. They are in effect under the control of the Presidency. The judiciary and procuracy have little oversight over them.
50. He explained that the Procuracy is supposed to oversee pre-trial investigations but in practice this does not happen except to a limited extent. In practice the procurator sees the case file just prior to it being presented in court. The more important the case the less control the Procuracy has over it. He spoke about a 2009 report commissioned by President Medvedev in which it was said that in important cases Russian courts would protect the interests of State officials. The commercial Arbitrazh court are more independent.
51. Dr Gladyshev spoke about the rules of criminal procedure which favoured the prosecution over the defence. This was a systemic weakness in the RS. The investigator puts the case together and greater weight is attached to his or her evidence than to the defence’s. The inclusion of defence evidence is at the discretion of the investigator. The evidence provided by the prosecution is called proof whilst the evidence from the defence is called materials. Defence petitions to include evidence in the file are rejected and the court treats it with scepticism.
52. He described the criminal justice system as the processing of the accused in a smooth way through the stages of the proceedings with a pre-determined result. The problem is not direct political interference with cases but it is done via the Chairman of the Court who can bring pressure to bear on an individual judge.
53. Dr Gladyshev relied on the research of a Russian scholar who said an acquittal might be detrimental to the career of a prosecutor who has no control over the gathering of evidence for the file but must get a conviction whatever the cost. He gave the statistics on acquittals provided by the Supreme Court for the years 2014 to 2016. The numbers are falling. In 2016, the probability of being found guilty by a court was in the order of 99.64%. He provided more figures for appeals on acquittal in his paragraph 204.
54. Dr Gladyshev spoke about the Yukos case which was described by international observers as unfair. More worryingly perhaps was the 2011 report prepared by the Presidential Council on Human rights. This body included independent and respected highly qualified academics, some Russian some not. They found there had been fundamental violations of law and due process and that this was so serious the verdict should be annulled. After the publication of the report some of Russian experts were prosecuted and one left the country. A request was made to Germany for the extradition of one of them, this was refused.
55. Dr Gladyshev considered the status of Mr Sechin and Rosneft and at core bundle A tab 10 page 177 paragraph 277 is his important comment that “the ethos of achieving commercial, personal and political aims through a blatant manipulation of the Russian legal system is deeply imbued in the corporate culture of the high echelons of Rosneft”. The way that Mr Sechin acquired the assets of Basneft in a controversial way is also covered in Dr Gladyshev’s report. Criminal and civil cases were used against the company to gain its assets.
56. The witness analysed the allegations made in this case and the Request. He did not believe the case was complex. He noted that it is alleged that the RP abused the trust of the top managers of Rosneft. He had checked the civil case and found nothing saying the top managers had been deceived; they had known about the proposed contract in relation to the building. In his view the charge is vague, no abuse of trust is shown and under Russian law said the contract excludes fraud. There has to be the misappropriation of property belonging to another yet it is alleged the persons whose trust has been abused were the senior managers of Rosneft. They were not the losers and they would never have heard of a small office building in a provincial town.
57. He said he thought the contractual arrangement looked like a normal business arrangement. VLR needed money for it to be built and NPZ paid the money under a contract. It was business activity that should not have been criminalised. In cross examination the witness did not agree that Rosneft’s ownership of NPZ meant that Mr Votinov could be defrauding the parent company. He explained that all the assets of NPZ were in its ownership and Rosneft only had the right to receive dividends and take part in the corporate management. He did not answer Mr Caldwell’s question whether a fraud affecting profit and dividends could not be a fraud against Rosneft and said there would be a civil remedy to that problem. He insisted that the charge under article 159 was not sustainable. He explained that the criminal charges had to rest on civil law. The civil decision is binding on investigators and judges in the criminal case.
58. Finally Dr Gladyshev explained that a decision of the constitutional court meant that ECHR rulings were no longer binding when the Russian Presidency decided they should not be.

Evidence - prison conditions

1. On 18th May 2018 I heard from two witnesses Professor Morgan (bundle H tabs 6 and 7) and Dr Golubok (bundle H before tab 1 page 1 to 16). Between 24th and 28th April 2018 they had together visited the remand prison SIZO 1 in Nalchik, in the Kabardino-Balkarian Republic and IK9 near Krasnodar, a penal colony where it was said, in an assurance letter dated 27th November 2017 signed by Mr Yusifov, that Mr Votinov would be held if he were to be extradited to the Russian Federation. Professor Morgan was the expert who had visited IK9 before and whose evidence I have heard on a number of occasions. Dr Golubok is a lawyer working on behalf of Mr Votinov who was making his first visit to inspect a prison.
2. The two men were accompanied by an interpreter for Professor Morgan They were also accompanied by someone from the Procurator’s Office in Moscow.

Professor Morgan’s evidence

1. Professor Morgan’s report summarises the CPT position that there have been 24 reports and Russia has only approved three for publication. He sets out the serious concerns the CPT has had in the past at his paragraph 4.1. Some of the problems are gross overcrowding and deplorable custodial conditions in police stations and SIZOs. There is also a lack of transparency on the part of the Russian authorities.
2. In the most recent published report, that relating to a visit in June 2012 although there is seen to be a trend towards an improvement of material conditions and a reduction in the number of prisoners awaiting trial, overcrowding has not abated. The CPT had an expectation that the Russians would observe a standard of at least 4m2 of living space per detainee. Unfortunately, on occasions the 4m2 included the sanitary facilities in a multi-occupancy cell which made the available space much smaller. In 2012 the CPT found that although efforts had been made to reduce the prison population, in practice there were examples of overcrowding in most of the establishments it visited.
3. Professor Morgan goes on to say at his paragraph 4.11 page 39 of bundle H that what is asserted by the Russian authorities is not what is always found by the CPT. At SIZO Kresty despite the assurances of the Russians there were prisoners being held in conditions which fell within the ECHR’s definition of inhuman and degrading.
4. The other issue with the Russian Federation is their refusal to allow the CPT reports to be published. As Professor Morgan says it undermines confidence in the prevailing situation. On a more positive note the Russians have reported to Birkbeck University that the numbers of detainees continue to fall.
5. The CPT also reported that the organization tasked to carry out inspections (public monitoring commissions) as they were in 2012, had to give notice before carrying out an inspection. There were reports also of them receiving threats and on occasions reported that prisoners had been told not to complain to them.
6. As far as the two establishments of concern in this case, Nalchik SIZO 1 has been inspected by the CPT in 2008 and 2016 but the reports have not been published whilst IK9 in Krasnodar has never been inspected by them. Professor Morgan had visited IK9 before in 2016 and was able to compare his findings then and in 2018.
7. Professor Morgan understood from Ms Dudkina who had accompanied him from Moscow that the preliminary hearing would be held in Nalchik as that was where the most competent investigator/prosecutor was. It had been determined by Moscow that he would be tried there. Tuapse where the offences were alleged to have taken place was 200 miles away. An alternative theory which he put forward was that the SIZO conditions in Nalchik are superior to the ones in Krasnodar. He thought this was plausible as they were planning to close it when a new one in Krasnodar opens.
8. He was told the if extradited Mr Votinov would go by air to Nalchik SIZO via Moscow, he would be tried at Nalchik Court and if convicted and sentenced he will go to IK9 in the Krasnodar Region and not the Kabardino-Balkaria Republic. He was going to Krasnodar because that was where his last registered home was.

SIZO 1 in Nalchik - Professor Morgan’s evidence

1. Professor Morgan said SIZO 1 in Nalchik had a capacity of 522 prisoners but on the day of their visit there were 402 prisoners there. It is a relatively new prison. One block was completed in 2007, one in 2010 and another for administration and facilities is nearing completion. He looked at the statistics produced for each of the preceding 12 months and they showed from 437 to 350 prisoners. He was satisfied it had not been overcrowded in the previous 12 months.
2. The staff claimed the CPT reports after the February 2016 visit to the SIZO had been broadly positive. They said it was on the internet but it was not produced.
3. There were small differences in the numbers of prisoners said to be in the cells. When visited the occupancy was lower than what was said in the individual cell statistics but he did not consider this was due to any attempt to mislead but much more about inefficiency. Professor Morgan described the cells as roughly the same size, with 4m2 per prisoner except for seven cells which contained cages for either lifers or prisoners who wished to be on their own. These would not pass an Article 3 test.
4. The 2010 block had better cells and fittings than the older one. The 2010 block had televisions, a large fridge and a lavatory which had flushing and in an enclosed area. The 2007 block was more dilapidated with a basic lavatory although it was still fully partitioned. The ablution area was filthy and decrepit. The old block was tired and very run down but there were no signs of rodents or insects nor did the cells smell bad.
5. All cells had bunks. The newer block had a table and seats which were fixed to the floor. There were windows which could be opened but they were covered by oppressive grills which would have been criticised by the CPT. There were no complaints of cold or heat or of bad ventilation.
6. There was a shower room for each landing and prisoners could go there twice a week. There was hot and cold water and a doctor and nurse for each landing. There were 16 cells per landing. There was a prison library and on the top floor of each of the two cell blocks, 16 exercise yards measuring 8 x 6 meters. One had a table tennis table. Prisoners take exercise there for one hour a day with their cell mates.
7. There was one punishment cell per landing where the bed was locked upright during the day where a prisoner could be held for up to ten days.
8. The governor showed them the top landing of Block two and in particular cell 135, this was where it was said Mr Votinov would be held. It was 18 m2 and could house four prisoners. It had a television and fridge. The ablutions area was well fitted.
9. There were video link facilities to communicate with local courts. They provided an “excellent visual and audible link” with the court and prisoners said it worked well. There were interview rooms to legal conferences with mesh screens dividing the lawyer and prisoner. Prisoner visits are at the discretion of the prosecutor. Professor Morgan said that he was told that many prisoners are not allowed visits. One prisoner they met had been refused visits once he had appealed his sentence.
10. The two witnesses met a Mr Bermanitov a member of ONK (the prison monitoring board) and Professor Morgan said the impression he gave was of uncritical complacency (paragraph 6.17). On the positive side he had attended four times in 2018 but on the negative side there had been no complaints about the SIZO just about delays in the criminal proceedings.

IK9 - Professor Morgan’s evidence

1. They had visited IK9 on 25th April 2018. The Professor had visited it two years before. Very little had changed in the interim. Its maximum capacity is 1228 but it housed 1003. The governor said the number had declined in line with the general decline in the prison population in the Russian Federation. It is almost exclusively for prisoners serving their first sentence. The average sentence was one of three to five years. Most prisoners were Russian speaking in their 20s and 30s.
2. The accommodation is in dormitories ranging from 13 to 93 beds depending on the size. There were three regimes, ordinary (the majority), the privileged (a small minority of up to 82) and strict discipline, which on 25th April consisted of nine prisoners out of the 1003. The regime depends on the behaviour of the prisoner and is decided by the Board chaired by the governor. On a paper given to the Professor was a note which said that Mr Votinov if sentenced to imprisonment will be held in a privileged unit called dormitory eight, which is the least cramped and affords 3.73m2 per prisoner. In this dormitory there were single beds rather than bunks. The privileged prisoners had by far the best accommodation. It was clean, freshly pained with a bathroom area which had new lavatories, sinks and footpaths. The tv room and kitchen area had newish furniture and equipment.
3. The Professor said all the dormitories were spartan and prisoners had few possessions on show. Discipline is strict. He spoke to prisoners and they confirmed that the prison was orderly, assaults were unknown and prisoners felt safe. “The ethos was mutual aid and peaceful co-existence” (tab 6, page 46 paragraph 7.7).
4. Prisoners and the staff agreed that there had been no suicides or prisoner on staff assaults nor an escape in the last five years. The prisoners agreed the prison was calm.
5. The space per prisoner includes the tv room, a kitchen area and a room with desks and the dormitories are very cramped. They afford the prisoners no privacy. They are a barrack style accommodation with instructions on how to make up the beds and how to wear the uniform. They are never locked in to the dormitories and can use the bathroom area at night. In the evenings prisoners are able to go to other dormitories in their block.
6. The Professor pointed out that it was difficult to get prisoners to speak openly about the day-to-day reality of life in the dormitories.
7. He set out the arrangements for meals. They have twice weekly showers (up from 2017) when they receive clean underclothes and bed linen. The day starts at 6am and finishes at 10pm when lights are switched off.
8. On arrival the prisoners receive bed clothing, a black uniform etc and a full hygienic kit. The dormitories are heated in the winters which can be very cold and in the hot summers they are well ventilated. They are medically examined on reception and medical assistance is appropriate for a prison of its size.
9. An arrangement that he had criticised in 2016, that of a metal caged bed in the psychiatrist’s consulting room, had been removed and replaced by metal latticing which separated the prisoners from the medical professionals. The governor said it was to protect their female doctors.
10. There were appropriate facilities for visits including conjugal visits which can happen every three months.
11. The prison was “heavily geared towards education, occupational training and industry”. In the domestic half of the prison there was a library, a Russian Orthodox Church, a place with sells confectionery, cigarettes etc, a large sports area marked out for football and basketball which prisoners are allowed to use for two hours a week and a gym area with equipment provided via the Russian Orthodox Church.
12. In the work area, there is a teaching block with production workshops which offer courses such as metal working, welding etc, a greenhouse producing vegetables for the kitchen and they rear chickens and quail. Prisoners are paid for their work and receive on average £50 to £60 per month. When spoken to they were positive about the opportunities the prison offered.
13. They spoke to two prisoners on the restricted regime and were going to speak to others afterwards, but when they returned to speak to the others, they were told by the prisoners they no longer wanted to meet the two witnesses. Professor Morgan said it was “transparent that they had been got at by the staff”. A punishment block was also seen by the witnesses where prisoners are held for up to ten days.
14. Professor Morgan in 2016 had seen a rock concert happening in the prison which the prisoners said happened once or twice a year whilst the officers said it was once every two or three weeks). It happened again in their April 2018 visit. The group started playing on their arrival at 10am and continued until 1pm.
15. Professor Morgan and Mr Golubok had a meeting with a member of ONK but this contrasted with his meeting with ONK members in 2016. Now ONK had no concerns about the running of the prison. In 2016, he had been told about the complaints received, letters written complaints upheld etc, usually about matters such as unjustified subjection to disciplinary sanctions etc.
16. Professor Morgan’s conclusions are at tab 6, page 52, paragraph 8 of his report. He accepted that the assurances given that Mr Votinov would be held in the most superior accommodation in Nalchik SIZO and a privileged dormitory in IK9, are of doubtful legal standing. He accepts that the CPT would have been critical of certain aspects of the SIZO in Nalchik but said they were not so acute that would lead to a finding at the ECHR of a breach of Article 3. The SIZO is not overcrowded and the prisoners feel safe. He had come to the same conclusion in relation to IK9. There are positive features, the same he had seen in 2016 and the prison is 20% below capacity. They are free to move around their living units during the day and can use the lavatory facilities all night long. His concern was that the prisoners were pressurised by the staff and were very reluctant to speak. The prison board gave little or no impression of being a critical independent voice. He did not find that the conditions would enable the ECtHR to find IK9 in breach of Article 3.
17. In relation to the members of ONK, the one responsible for SIZO 1 did not speak like an independent member of the body and as for the one connected to IK9 he was complacent and an apparatnik. Of concern was his view that the prisoners had been got at with a level of control and intimidation.

IK 9 – Dr Golubok’s evidence

1. Dr Golubok is a lawyer and not an expert on prison conditions and this was his first visit to inspect a prison. Dr Golubok made it clear that he did not disagree with Professor Morgan’s report.
2. Dr Golubok relied on his report. He said to get from IK9 to the SIZO they had to go via Moscow by air as there was no other way of getting from one area to the other.
3. In relation to the colony IK9, Dr Golubok said he found there to be a degree of orchestration, he could smell fresh paint and there was an inability to speak to prisoners. They showed him a new exercise yard they had just installed. There were prisoners using it in the morning but in the afternoon no one was there.
4. A concert was being held and Professor Morgan was told that they were volunteers. They got the impression that the musicians had been brought in by the prison governor for the visit. When Professor Morgan complained about the sound the governor ordered for it to stop and it did.
5. Mr Golubok had the impression that the prisoners and others including the orthodox priest had been told to ask questions of the Professor about such topics as football and how things were done in the United Kingdom. The questions did not appear to be spontaneous. They were a routine and gave the impression they had been prepared. His concern was that the questions distracted Professor Morgan and wasted time.
6. They saw a punishment unit where prisoners can be placed for at least a year. They decided to interview everyone on the unit. They selected the first two they wanted to speak to. They were then prevented from speaking to others, although it was the prisoners who refused to speak to them, his impression was that they had been pressurised in some way.
7. He pointed out that if the RP was tried in Tuapse Court in Krasnodar Krai he would not be able to get from the SIZO to the court every day as it was many miles away. There was no assurance in relation to the transfer to court. He could see no reason why Mr Votinov would be tried in Essentuki. There was no prisoner in the SIZO who was being tried outside that Republic.

SIZO 1 in Nalchik - Dr Golubok’s evidence

1. In relation to the SIZO Dr Golubok said they were accompanied by at least ten officials but they were able to communicate with random prisoners. It was clear though that the prisoners understood they were accompanied by some high-ranking officials.
2. Whilst at the prison they were constantly videoed and photographed. He asked for two documents, one was the population register for 27th April 2018 and one for the same day the month before which they were not given. In the afternoon they were given the document which was annexed to his statement in bundle H tab 2. This had the number of prisoners in each cell that day. Dr Golubok thought it was suspicious that it was not given to them at 9am. He pointed out there were discrepancies between the number said to be in the prison on 1st October 2017 in the assurance (274) and the number on another document provided at the prison (bundle H tab 3) which was 350 although he accepted in cross examination it could be an error. He agreed on any view the prison was not overcrowded with a maximum capacity of 522 prisoners.
3. He said that whilst in the SIZO he had had good meaningful contact with the prisoners and spoke to them on their own, in IK9 the general feeling was that it was an operation staged for the witnesses. They were not given an opportunity to speak to the prisoners in the colony at all.
4. Dr Golubok said he had two major concerns, the first about how the RP would be transferred to court and the second whether he would be held there at all when the trial was to take place many miles away.
5. Dr Golubok pointed out that foreign diplomats can only visit their own nationals. There would be no legal obligation for the Russian to allow embassy officials from the UK to visit Mr Votinov.
6. In cross examination Dr Golubok said he was not aware that the Prosecutor General’s office had as one of its roles that of inspecting detention facilities. Mr Caldwell pointed out that the assurance at tab 7 page 68 came from Mr Yusifov, from that office. He did not know that the Prosecutor General’s Office had a statutory right to visit all places of detention but accepted that it was the central authority for the transmission of information relating to extradition requests. Mr Golubok said he was concerned about the seniority of the official giving the assurance. It was not clear to him whether he had the authority to speak on behalf of the office.
7. As to the ease he had in speaking to prisoners in SIZO 1 they were only able to see ten cells and speak to less than 5% of the prisoners at the facility. This was not enough to make a judgment about the conditions although he said that they had pretty good meaningful contact with the detainees in SIZO 1.
8. In relation to the member of ONK, Mr Golubok was surprised he had not heard of hunger strikes in the prison and would have expected the ONK member to know about this as there was much press comment about it at the time.

Submissions

1. I have been provided with a number of written submissions. I will not summarise them here as they are substantial. There were skeleton arguments before the hearing, submissions on the first part of the case with final submissions received about prison conditions and assurances received after the last date of evidence. I have read them all, more than once.

Findings

1. In relation to the evidence of Professor Sakwa, I found and indeed it is accepted by Mr Caldwell that Mr Sechin, the Chief Executive of Rosneft, is a very powerful man, second to Putin and a close friend of his. I find that the complaints of Mr Sechin and other senior Rosneft managers lie behind the request.
2. I accept that there is evidence that in the past Mr Sechin has been involved in corporate raiding as explained by the witness. I accepted the evidence of Dr Gladyshev that “the ethos of achieving commercial, personal and political aims through a blatant manipulation of the Russian legal system is deeply imbued in the corporate culture of the high echelons of Rosneft”. The way that Mr Sechin acquired the assets of Basneft in a controversial way is also covered in Dr Gladyshev’s report. Criminal and civil cases were used against the company to gain its assets. A fascinating picture is painted by the witness in paragraphs 282 of his report onwards.
3. I accept there is much evidence which indicates that Mr Sechin was involved in appropriating the oil giant Yukos for Rosneft. Mr Sechin is well-known as being part of the powerful siloviki who defend the State. I noted and it was not challenged that Mr Sechin was summonsed to come to court on four occasions to give evidence recently and did not attend, giving an impression of being above the law. It was an example of what Professor Sakwa called his “ability to act with impunity”.
4. Having concluded that Mr Sechin is a man of great power, the question for this court is whether his involvement would affect the proceedings against Mr Votinov. I found it is an unusual feature of this case that Mr Sechin, the Chief Executive of a vast company, is personally involving himself in these prosecutions.
5. Mr Votinov was an executive of Rosneft which was the parent company of NPZ. Mr Votinov was running NPZ at the time of the allegations that have been made. The investigators say Mr Votinov along with Mr Firichenko have allegedly defrauded Rosneft. The Ruling to Institute and Commence Criminal Proceedings alleges that the RP abused the trust of “the top management of NK Rosneft OJSC, acting out of selfish motives”.
6. The defence argument is that Mr Sechin is motivated by corporate raiding and revenge on Mr Votinov who refused to be part of a corrupt enterprise.
7. The witness Mr Dyatlev represented the co-defendant Mr Firichenko. He was a compelling witness. He explained and I accepted that unusually for the type of allegation being made, the case was moved back and forth between five high-ranking investigators in Essentuki and Krasnodar, all within a matter of a couple of hours on 30th November 2015. I accepted his evidence that on the face of it the case was not interregional or complex. The events underlying the allegations all occur in Tuapse although it is fair to say that the complainants Rosneft are based in Moscow.
8. Mr Dyatlev also gave evidence about how the co-defendant Mr Firichenko was treated. I accepted his evidence. The investigators decide where a defendant is to be held. He was held in a harsh prison for 100 days where usually a defendant is held for only ten. I accepted the evidence that Mr Firichenko was not allowed to see his family for about a year and was only allowed to after he signed some papers in relation to the case. This being done in the absence of his usual defence lawyer.
9. Mr Dyatlev spoke about the number of motions ignored by the court. The court’s refusal to call certain defence witnesses who had to be brought to court by the defence. Nevertheless I noted that the court had acquitted Mr Firichenko of the most serious charges and he was released on time served. Mr Dyatlev’s contention was that Mr Firichenko should have not been convicted of any crime.
10. Professor Sakwa said that there are some decent judges in the system but he went on to say that a person cannot get justice when there are political interests are stake. He explained that there are prosecutions to order, false allegations aimed at the managers and owners of a company made to get the assets of a company. The results of these activities are cases which have weak evidential support, obscure charges which often are fraud charges and a powerful complainant. His point was that some of those attributes were to be found in this Request.
11. Trust is an important part of extradition. On 8th February 2018, the very senior investigator, the Major-General of Justice, M A Tkhakakhov, the Head of Criminal Investigation of the Main Investigation Directorate of the Investigative Committee of the Russian Federation for the North Caucasus Federal District misled the court.
12. Firstly I look at what was said by him about the sentence of the court trying Mr Firichenko: “the court sentence established the fact that AV Votinov and AN Firichenko committed the crimes,…” . There can be no doubt that this is untrue. I have received no explanation for what the Major-General said. He was saying the opposite of what the court had found presumably because on the date he wrote that statement the defence had not served evidence from Mr Dyatlev and the judgment of the Tuapse Court.
13. I find that the second part of the sentence in 8th February 2018 document could conceivably be construed in two ways. The second part reads “…, and gave a prejudicial evaluation of criminal actions of AV Votinov, since he committed the crimes in association”. On a generous reading for the RS, it might just mean the court gave an evaluation of Mr Votinov’s criminal actions which was prejudicial to the investigation because the investigation case is that he committed the crimes in association and the court found he had not committed the crimes in association.
14. The more obvious way of construing the second part of the sentence is that the court evaluated the actions of Mr Votinov to his prejudice as he committed the crimes in association.
15. The RS did not attempt to explain the first half of the sentence at all. A different investigator (more senior I speculate based on his rank) a Lieutenant-Colonel of Justice attempted to explain the second part of the sentence in a document of 8th May 2018 (bundle H, page 76). Paragraph four reads “The earlier sent information indicated the “prejudicial sense” of the aforesaid court judgment from the perspective of the prosecution, as long as the pretrial investigation against Mr Votinov has not finished, and the investigation has not obtained the facts, which could have spoken to his innocence, including in the course of examination of particular provisions of the judgment against Mr Firichenko”.
16. The meaning is not clear but I take this to mean that the court in Firichenko had prejudged the case against Mr Votinov in the sense that the pre-trial investigation had not finished and had not obtained evidence which might have shown his innocence including by examining the court’s judgment.
17. The explanation given does not explain at all the first part of the sentence above and does not explain to my satisfaction the second part. I find the statement was untrue and it is only thanks to the Tuapse Court judgment that the RS investigator was found out.
18. The next steps taken by the RS are instructive. The appeal period after the judgment of 29th September 2017 had long run out. From the RS 8th May 2018 additional information at Bundle H tab 8 page 77 paragraph 3, it is clear that the judgment had come into force but that the verdict was now going to be appealed which could be done within one year of the sentence/judgment coming into effect. The prosecution was asking for a new trial for Mr Firichenko as the judgment violated an article of the Criminal Procedure Code because it dealt with Mr Votinov when he was not before the court.
19. I do not take issue with an appeal as I can understand why the RS might do that but the timing is of concern. The appeal was launched once this court had become aware of the Tuapse Court’s judgment in relation to Mr Votinov. The prosecution realised their case had been weakened by the acquittal. The issue I come back to is the false statement made to this court and what conclusions this enables me to draw from such an approach by a senior investigative officer.
20. There are a number of issues raised by the defence which I do not need to resolve to decide this request. I mention below the “Plan of Activities” relied on by the defence.
21. The defence position is that no offences have been committed and they argue that the direct role of Mr Sechin in this prosecution is shown by a document called the “Plan of Activities” (bundle A, tab 16 page 670) which as Chairman of the Management Board of Rosneft, he approved. That is said to be direct evidence of Mr Sechin and Rosneft’s plan to create a criminal case against Mr Votinov and others.
22. The plan was undoubtedly drawn up in late Spring 2015 and could be a plan to prosecute Mr Votinov for ulterior motives. The defence case is that the document sets out how the mooring case involving Graviton and NPZ was going to be prosecuted. They say it is a blueprint for the investigation and prosecution that followed and shows that it was being planned in advance. Their case is these men were being framed by Rosneft.
23. I do not give the document that significance. A more obvious interpretation is that the Management Board of Rosneft had been informed that some fraud was taking place and decided to investigate it. The Board sets out what needs to be done and by whom to investigate the allegation. The internal audit section is involved in the on-site inspection. Their responsibilities are set out in detail and include such activities as performing a cost analysis of the works, reviewing the number of casing pipes and drilling used for the benefit of NPZ and ensuring spot checks will be carried out. Then on page 672 the activities and investigations to be carried out by the Security Service are listed. They must uplift design and delivery documentation and must use an independent specialist organization to look for concealed works.
24. Other joint activities at page 672 include receiving legal advice about whether Rosneft could submit a claim of money laundering (“unfounded accumulation of wealth”), if the goods declared by them were not in fact supplied. An independent expert review of the geological survey is to be carried out if certain amendments to the landslide control plan have been carried out. Then based on these, drawing up a “founded refusal to pay for the works performed” and other actions all with the objective of “building a body of evidence and identifying responsible officials”. The last box in the plan has the Rosneft Security Service submitting materials to law-enforcement authorities.
25. There is no evidence of an attempt to frame innocent managers of the companies (either NPZ or Graviton), rather the Management Board of Rosneft are setting out the steps to be taken by internal departments assisted by independent experts to uncover dishonest activity. I have concluded that the document was a perfectly lawful and appropriate investigation into a fraud that Rosneft believed it was the victim of.
26. Another piece of evidence that the defence say is important is the threat given to the acting manager of Graviton Mr Barsov (bundle b tab 22/23 p78 onwards) that the company either pay sums to Rosneft or face a prosecution to order. What appears to be said by someone from Rosneft in a covertly recorded conversation is “If Igor Ivanovich [Sechin] gives the order, they will find a way of to get everyone”. I find the tenor of the conversation was threatening on occasions and the impression received was that Sechin would use the power he had to put pressure on others.
27. I have no reason to doubt Mr Yarchuk’s evidence that the conversations took place in June 2015 and were between Mr Barsov of Graviton and Mr Krilov of Rosneft.
28. In relation to the Graviton mooring case I accept the clear evidence that Mr Sechin personally ordered an audit (see above). He followed this up with further personal involvement when on 26th August 2015 Mr Sechin wrote to the Russian Minister of Internal Affairs making a criminal complaint (bundle b tab 34 page 243). The Russian Deputy Minister of Internal Affairs replies to Mr Sechin’s complaint on 24th September 2015 explaining that in reaction to his letter that the Ministry of Internal Affairs in Krasnodar Krai had opened a criminal case in relation to the first Graviton mooring case.
29. In terms of the argument that the allegations lack evidential merit, the RS does not have to show a prima facie case. The RP did not give evidence and I considered the fact that Professor Sakwa was relying on instructions that neither this court nor Mr Caldwell had seen undermined his account of the weakness of the case. He said the case against Mr Votinov appeared “totally fabricated”, he had never met the RP and had not been able to question his account. This court was not able to weigh up the RP’s evidence. Dr Gladyshev’s analysis that Rosneft was not defrauded did not make sense. They were the parent company and if NZP was being defrauded so was Rosneft. He said the charge was vague, I do not agree.
30. I have not determined that the charges have or have not evidential merit. Mr Sechin may have been driven to commission an investigation and prosecution by anger that Rosneft had been defrauded by someone he had promoted, but this is just speculation. I certainly cannot find that there is no evidential merit at all in the allegation.
31. I give some weight to the Tuapse court’s findings in Mr Firichenko’s case that there was no evidence of theft or dishonesty and that Mr Votinov was misled by Mr Firichenko.

Prison findings

1. Professor Morgan is the expert on prisons who has visited a number of prisons over the years and had visited IK 9 before. Having considered his evidence which was essentially supported by Dr Golubok I do not find the conditions at either SIZO 1 or IK 9 would breach the RP’s Article 3 rights if he was to be held in either of those institutions. There is no clear and cogent evidence which could discharge the burden.
2. I have set out above the evidence of Professor Morgan which was essentially unchallenged. Mr Caldwell points out rightly that the rebuttable presumption of compatibility applies to IK 9 as penal colonies have not been subject to the criticism at the ECHR in Ananyev v Russia of the SIZOs. There was no clear and cogent evidence which could rebut the presumption in the case of IK 9.
3. The RS has provided evidence and assurances to the court in relation to the pre-trial facilities in SIZO 1. The conditions in that SIZO would not lead to a finding of a breach of Article 3.
4. The issue for this court is whether the assurances given by the RS can be trusted. There was a change of prison at one point but I do find the assurances have been disclosed to the court and they are specific. I find that the assurance given by Mr Yusfov, the Acting Deputy Head of the Extradition Department will bind the RS. The Russians will not go behind that assurance, if they were to do that, the very recent extraditions to the Russian Federation would come to a halt.
5. I find that although the RS allowed Professor Morgan and Dr Golubok to visit the two institutions the ONK officials met by the two witnesses would not play any robust role in relation to what was happening to Mr Votinov.

**Conclusions**

 **Matters not in dispute**

1. I find the court has received the certified request; Mr Votinov’s particulars are provided in the request; the particulars of the offence are set out in the Indicment issued on 15th December 2015 and the particulars satisfy section 78(2)(c). The Request contains the equivalent of a warrant of arrest, the decision is to be found in a document named “Order of Detention” which is dated 23rd December 2015.
2. I find that the person appearing in front of me, Andrey Votinov is the person whose extradition is sought; the offence set out in the request is an extradition offence and copies of the documents sent to this court by the Secretary of State have been served.
3. The various requirements of section 78 are satisfied.
4. I turn first to the argument that Mr Votinov’s extradition is barred by extraneous considerations:

**Extraneous considerations**

1. Section 81 of the Act reads as follows:
	1. *A person’s extradition to a Category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that*
	2. *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*
	3. *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.*
2. The question for this court is whether the request for extradition has been made on account of Mr Votinov’s political opinions or whether he might be prejudiced at his trial on account of his political opinions. There is evidence in this case of a close tie between big business and politics. Professor Sakwa says Mr Votinov was resisting Mr Sechin’s political machinations and that is why he is being prosecuted. In the Russian Federation it is often hard to distinguish between politics and business and therefore I find that the circumstances set out by the Professor if proved might fall within the definition of section 81.
3. I find no evidence however, sufficient to support the bar under either section 81(a) or (b). I did not have either a statement from the RP or his evidence to be able to give weight to the lengthy account he gave to Professor Sakwa of his political stance with Mr Sechin. Without that information or any independent evidence the bar is not made out. On the evidence I have before me he is being extradited because it is being alleged by a very powerful politician cum business leader that he defrauded an extraordinarily prominent company in the Russian Federation.
4. This first argument in relation to extraneous considerations fails. There being no bars to extradition I must decide whether Mr Votinov’s extradition would be compatible with his Convention rights within the meaning of the Human Rights Act 1998.

 **Human Rights – section 87 of the Act**

1. Mr Keith and Mr Watson raise Article 6 and 3 issues under section 87 of the Act. I must decide whether Mr Votinov’s extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998. If I decide in the negative I must order his discharge.

Article 6

1. 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.
2. The facts in this Request are unusual. The allegations made here are not of an ‘ordinary’ criminal offence. Mr Votinov is alleged to have defrauded one of the biggest companies in the Russian Federation in a number of ways. Although the request is in relation to a conspiracy to defraud by arranging for NPZ to pay rent for an office that was not used, Mr Votinov has also been said to be involved in a fraud in relation to a mooring which NPZ paid to have removed and then re-built. Rosneft’s case is that it was never removed and the company was charged for work that did not take place. The loss run into many millions of roubles.
3. The complainant in each case is Rosneft. There is no doubt that Mr Sechin is one of the most powerful men in Russia and there is clear evidence that he personally made the complaints. The Request says in bundle A at tab 6 page 6 that the RP “abused the trust of the top management of NK Rosneft, acting out of selfish motives”. There is much evidence that as Chief Executive of Rosneft which is the biggest oil company in the Russian Federation, Mr Sechin has been involved in corporate raiding. He is a close friend of Mr Putin’s. He was said recently not to have attended a court hearing when asked four times to do so. He is the one alleging that Mr Votinov, a man he promoted to lead NPZ and to be an important player in Rosneft, defrauded his company.
4. The evidence of Professor Sakwa is instructive, he said Mr Sechin is part of the *siloviki* who are said to have suborned the judicial system, in particular the Investigative Committee of the RS. The professor said that although there are some decent judges in the system a person cannot get justice when there are political interests at stake or there is a powerful complainant. There is no more powerful complainant than Mr Sechin. Furthermore Tuapse and Essentuki are particularly vulnerable to the influence of the prosecutor’s office. Here too the head of investigation in Krasnodar has a hand in the prosecution, he is a man of power and of high esteem. Professor Sakwa’s view was that it was very unlikely that a court would be able to resist the pressure of those combined circumstances.
5. Professor Sakwa and Mr Dyatlev who was the co-defendant’s lawyer during the proceedings taken against him describe some unusual turns the proceedings have taken. The professor noted the signs of undue haste and Mr Dyatlev the number of procedural violations. Mr Dyatlev said that the case was moved between areas in an amazing way from one very senior investigator to another. In one and a half hours on 30th November 2015 the case went through the hands of five of high ranking investigators who were in areas hundreds of miles apart. The file was not digital and would have had to travel from one to the other, which was impossible in the circumstances.
6. Mr Dyatlev was critical of the investigator’s decision that it was a case of particular complexity and that it was an interregional crime. The lawyer has a much closer connection with the evidence in the case against Mr Firichenko and Mr Votinov, but I understood from his evidence that there were a great number of expert witnesses who had been instructed in the case. Furthermore the company defrauded was Rosneft which is based outside Tuapse as I understood it, so it might be said that it was an interregional crime.
7. Another piece of evidence to consider when looking at the possible fairness of any trial is the 8th February 2018 document. I received a false statement which had been written by a Major-General who was the head of criminal investigation for the Investigative Committee of the North Caucasus Federal District. The attitude of such a senior officer of the Committee was disappointing to say the least.
8. What then followed was instructive, outside the initial appeal period, an application to the Cassation Court was launched. On the one hand it might be said to show the strength of the view of the Investigative Committee about Mr Votinov, on the other hand, it might be that the Tuapse Court overstepped the mark when considering the case against the RP. The significance for this court of this whole episode was the seniority of the investigator making the false statement and what that said about honour and the honesty of the investigation into Mr Votinov. It undermined the case against him. This sense was not helped by the failure to explain why he had said what he had. The Major-General should have been subject to serious disciplinary measures for seeking to mislead this court.
9. I also have given some weight to the evidence that extradition was refused in relation to two co-defendants, Mr Yarchuk in Austria and another in Slovenia. I noted however that the reason the Judge gave in Vienna for the refusal was not political considerations but a concern that the RS had not explained why the loss alleged had increased from over 33 million roubles to over 73 million during the course of the request. The RS had been asked more than once to explain the change and had failed to do so (core bundle A tab 17 page 695).
10. Having considered the factors above, the prominent role of the complainant in this case and the false statement given by a senior investigator I find the facts in this case lead me to the conclusion that this is one of those exceptional cases where the defendant has shown there is a real risk that he will suffer a flagrant denial of justice if he were to be extradited to the Russian Federation.

Article 3

1. 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.
2. Mr Caldwell relies on 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.
3. In terms of Article 3, if I were to accept the assurances given by the RS and relying on the evidence of Professor Morgan’s findings which were supported by Dr Golubok and are set out above, I do not find that if the RP was incarcerated in SIZO 1 or IK9 that there would be a real risk that he would be subject to inhuman and degrading treatment.

 **Assurances**

1. The court must consider the Othman criteria (*Othman v UK* (2012) 55 EHRR 1) when looking at an assurance provided by a foreign state. In this case, I find that the assurances are clear, the prisons, SIZO 1 and IK 9 have been identified and a visit by two witnesses allowed. The assurances have been disclosed to the court and I find that Mr Yusifov, the Acting Head of the Extradition Department, General Department of International Legal Cooperation can bind the State and the assurances are being given by a Contracting State. There is a concern that the trial may take place many miles from the SIZO 1 but I accept a video solution is available. If a journey from one place to another has to take place, any discomfort will be of relatively short duration.
2. I am also required to consider the length and strength of relations between the RS and this country. I think it would be fair to say they are lengthy but they have been placed under strain recently. The major concern to this court is whether the assurances are objectively verifiable. It was clear from the meetings that Professor Morgan and Mr Golubok had with the particular members of ONK responsible for SIZO 1 and IK 9 that they are no protection at all for the prisoners. British embassy officials are not likely to be able to visit the RP if he is held many miles from Moscow. He is not a British national and there will be less willingness to visit. Mr Golubok said that British officials would not be allowed to visit the prison, but I find that if embassy officials had an appointment to meet Mr Votinov, the authorities would allow them in. I was struck by the evidence of Mr Dyatlev that he visited Mr Firichenko two or three times a week and I am sure that Mr Votinov would be allowed the same.
3. I am also required by Othman to consider whether there the RS is willing to co-operate with international monitoring mechanisms. I note that the RS allows the CPT into its prisons, it does not allow the reports to be published.
4. In terms of the British courts’ recent approach to assurances from the RS, in the last year or so they have been accepted and there is no evidence that the prisoner returned was not held in the prison about which an assurance has been given.
5. Overall I conclude that were Mr Votinov to be returned to the RS, he would be held in SIZO 1 and IK 9 if convicted. The Russian Federation officials know that if they were to hold him anywhere else, this court would be informed and no RP would be returned to the RS in the future.

Abuse of process

1. In the light of the decision above in relation to Article 6 above I do not turn to the abuse of process argument put forward by Mr Votinov. Unlike the many occasions where this argument is put in as a long stop, in this case if I had had to consider it the letter signed by the Major-General of Justice would have played a significant part in my considerations.

**Decision**

1. I am discharging the RP under section 87(2) of the Act.

Senior District Judge (Chief Magistrate) Emma Arbuthnot

28th June 2018