Neutral Citation Number: [2017] EWHC 735 (Admin)

Case No: CO/3567/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/04/2017

Before :

LORD JUSTICE GROSS

MR JUSTICE GARNHAM

- -

Between :

Stanislav Dzgoev	**Appellant**
- and -	
Prosecutor General's Office of the Russian Federation	**Respondent**

- -
- -

Mark Summers QC and Ben Keith (instructed by **Kaim Todner**) for the **Appellant**
Peter Caldwell and Nicholas Hearn (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing date : 24th February 2017

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Approved Judgment

Lord Justice Gross :

Introduction

1. This is the judgment of the Court, to which Garnham J has made a very substantial contribution.

2. Mr Stanislav Dzgoev appeals, pursuant to section 103 of the Extradition Act 2003 and with the permission of Dingemans J, against the decision of District Judge Grant, dated 16 May 2016, ordering that his case be sent to the Secretary of State, whereupon, on 11 July 2016, the Secretary of State ordered Mr Dzgoev's extradition to Russia. The Russian authorities seek Mr Dzgoev's return to serve a sentence of three and half years' imprisonment for two offences of street robbery, and to stand trial for a third similar offence.

3. The appeal advanced before us, like the opposition to extradition advanced before the District Judge, was based on a single ground. Mr Dzgoev asserts that his extradition to Russia would be incompatible with the United Kingdom's obligations under art 3 of the European Convention on Human Rights ("the ECHR"). A number of particular criticisms are made of the District Judge's judgment and we consider those below. However, as is common ground between the parties, the ultimate question for us is whether the District Judge was wrong to reach the conclusion he did that extradition to Russia would be consistent with the UK's obligations under art 3.

4. During the course of the hearing before us, the Appellant sought permission to advance a second ground of appeal, namely that, contrary to s91 of the 2003 Act, it would be unjust or oppressive to extradite him because of his physical or mental condition.

The History

5. The Appellant's date of birth is 14 December 1987; he is now 29. As he makes clear in the proof of evidence admitted in evidence by the District Judge, he holds dual Russian and British nationality. He suffers from HIV and hepatitis C. He has previously been remanded in custody in Irkutsk in Russia.

6. Mr Dzgoev was sentenced by the Oktyabrsky District Court to three years and six months imprisonment for two offences of robbery. The Russian court had found that on 9 October 2012, in Deputatskaya Street in the city of Irkutsk, Mr Dzgoev snatched a gold necklace worth 10,700 roubles from the complainant. Further, on 27 October 2012, Mr Dzgoev entered a shop at 131 Krasnokazachya Street in Irkutsk, and snatched a gold necklace with a value of 5,000 roubles from a salesperson. The further offence of which he is accused is said to have occurred on 14 July 2013 when it is alleged that he stole a mobile phone with a value of 4,000 roubles.

7. On 30 December 2014, the Russian Federation issued a request for the Appellant's extradition. On 10 August 2015, he was arrested pursuant to the request. He was produced at Westminster Magistrates' Court and the extradition hearing was fixed for 18 February 2016.

8. The request is governed by Part 2 of the Extradition Act 2003 which applies to territories designated for that purpose by order of the Secretary of State. The Russian Federation is designated for the purposes of Part 2 by paragraph 2 of the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (S.I. No. 3334). Pursuant to paragraph 3 of the same order, the Russian Federation is also designated for the purposes of section 71(4), 73(5), 84(7), 86(7) of the 2003 Act and, as a result, Russia is not required to include evidence of a prima facie case against the requested person as part of this request.

9. On 2 March 2015, the Secretary of State issued a certificate in accordance with section 70(1) of the 2003 Act, certifying that the request was valid and had been made in the approved manner. When the case came on before him on 18 February 2016, the District Judge confirmed, as was accepted to be the case, that the court had been provided with all necessary particulars and documents as required by section 78 of the Act. He also confirmed, pursuant to section 78(4), that Mr Dzgoev was the person whose extradition was requested, that the offences specified in the request were extradition offences and that the requested person had been served with the required documents. He adjourned the hearing at the end of the first day to enable further evidence to be served in response to medical evidence served on behalf of the Appellant. The District Judge gave his judgment on 16 May 2016 after the completion of the resumed hearing.

10. The Secretary of State's decision to order the Appellant's extradition to Russia followed. Very properly, the Appellant has accepted that there can be no challenge to that decision given the District Judge's order. It follows that the only issue for this Court turns on art 3.

The Request and the Further Information

11. The extradition request provides an assurance that the Appellant:

> "*will not be subject to torture, cruel, inhuman or degrading treatment or punishment…Dzgoev will be detained in a penitentiary facility which meets standards stipulated by the ECHR and European Penitentiary Rules of 11.01.2006 and consular officers of the UK Embassy in Russia will be able to visit him at any time including with a view to check compliance with the guarantees set forth in this request"*

12. In addition to the request, the Russian authorities have provided further information and assurances in four letters addressed to the CPS.

13. First, in a letter dated 18 December 2015, the office of the Russian Prosecutor General asserted that, if Mr Dzgoev was extradited to Russia, "*he will be placed at Federal Government Institution* "Pretrial Detention Centre No 1 of the Department of the Federal Penitentiary Service of Russia in the Irkutzk Region*"* (*SKU SIZO-1 UFSIN Russia in the Irkutzk region)*". The letter goes on to confirm that conditions for prisoners in that SIZO "*comply with the requirements for the Russian penal enforcement legislation"*. It is asserted, in addition, that the maximum number of inmates at that prison is 1438; that, at the time the letter was written, 1054 persons

were held there; that there were 273 cells at the prison with a total floor area of 6,526.6 square metres; and that the floor area of small size cells, used for one or two prisoners, is about nine square metres.

14. That letter explains that, after his trial, Mr Dzgoev will be sent from SIZO-1 to one of the correctional institutions in the Irkutzk region: "*On the territory of the Irkutzk region there are 6 strict regimes correctional institutions, conditions of which comply with standards stipulated in Art 3…*" The letter said that the Russian Prosecutor General's Office would "*provide the supervision over observance*" of Mr Dzgoev's rights "*and compliance of detention conditions with the norms of international law and Russian legislation*". It was said that he would not be "*subjected to torture, cruel, inhuman or degrading punishment*".

15. In the second letter, dated 29 December 2015, it was asserted that Russia "keeps executing the action plan on execution of the requirements of the pilot judgment of the European Court of Human Rights in the case of Ananyev amd others vs Russia". That is a case to which we return below. It was said that "Issues of the state of lawfulness at the penitentiary bodies are under the permanent control of the prosecution bodies of the Russian Federation…"

16. The third letter, dated 16 March 2016, was submitted in response to expert evidence served on the Appellant's behalf. It repeated much of the substance of the previous two letters, including the assertion that, were Mr Dzgoev to be extradited to Russia, he would be held in SIZO-1 in the Irkutsk region. It was said that at the time of writing that letter 1064 prisoners were held at that institution, ten more than the total recorded in the letter of 18 December 2015, compared with a maximum of 1438. It was said that the average space available for each prisoner was 6.1 square meters. The letter asserted that the hospital at SIZO-1 possesses and provides HIV and Hepatitis medication, including the drugs currently provided to the Appellant.

17. The Prosecutor General's letter said it was noteworthy that:

> "*other European states make positive decisions on extradition of persons to the Russian Federation for bring criminal charges or enforcing offences. In some cases, foreign states requests guarantee to ensure that the extradited person be allowed visits by consular officers. Such guarantees have been requested by the Federation Republic of Germany, Kingdom of Spain, the Czech Republic and other states. Over the last six years the consular officials from the Federal Republic of Germany have consistently visited the persons extradited from Germany. No complaints have been received from them with regard to the conditions of detention of the extradited persons…..In 2015 only the European countries extradited to Russia 29 persons for bringing them to criminal responsibility with a view to enforcing a sentence.*"

18. By letter 7 February 2017, the Prosecutor General's Office provided more information about the institutions in which Mr Dzgoev would be held. It was said that, in accordance with Russian law, a Public Monitoring Commission ("PMC") had been created and was operating in the Irkutsk region. It was said that the members of that

commission had "*actively used powers granted to them to control ensuring of human rights at the pre-trial detention facilities and penitentiary facilities of the Region*". It was said that there had been no obstruction of the activities of the PMC. In October 2016, following an expiry of their term in office, new members of the commission were elected. Those members were said to include scientists, practising lawyers, members of social organisations and a journalist who was elected Chairman.

The decision of the District Judge

19. Having set out the background and dealt with the formal requirements of Part 2 of the 2003 Act, District Judge Grant noted the terms of the assurances provided by the Russian Federation. He recorded the assurance that the Appellant would be held on remand at SIZO-1 and noted that the "*further information confirms that this institution…does not suffer from the effects of overcrowding which caused the European Court of Human Rights to find violations of Article 3 in the pilot judgment in Ananyev and others v Russia*". He summarised the evidence he received from Professor Judith Pallot and Professor William Bowring. He recorded that he had received a one page proof of evidence from the Appellant which confirmed his family circumstances and his medical condition, but noted that "*there are no factual matters about which I am invited to make findings*". He referred to the decisions in Russia v Kononko and Russia v Zarmaev and set out directions he had made on an earlier occasion for the service of further information and further submissions.

20. The District Judge accepted the submission made on behalf of Russia that "conditions in correctional colonies have not been subject to a pilot judgment of the ECtHR and that there is no international consensus that conditions in such colonies place individuals at risk of a breach of Art 3". He referred to evidence about medical facilities in Russian prisons and noted the decision of Ouseley J in Mikolajczyk [2010] EWHC 3505 (Admin). He concluded his judgment thus:

> "*Having reminded myself of the judgment in Othman v UK [2009] UKHL 10 and having considered all the evidence both written and oral, I accept the assurances provided in this case. I find that there is no statutory bar to extradition and that extradition does not breach the requested person's convention rights. I therefore send the case to the Secretary of State for her decision on whether Mr Dzgoev should be extradited to the Russian Federation*."

Jurisdiction

21. This appeal arises under Part 2 of the 2003 Act. The Appellant appeals against the relevant decision, namely the decision of the District Judge, under s103. Section 104 of that Act provides as material:

> *(1) On an appeal under section 103 the High Court may—*
> *(a) allow the appeal;*
> *(b) direct the judge to decide again a question (or questions) which he decided at the extradition hearing;*
> *(c) dismiss the appeal.*

> *(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.*
> *(3) The conditions are that—*
> *(a) the judge ought to have decided a question before him at the extradition hearing differently;*
> *(b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.*
> *(4) The conditions are that—*
> *(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;*
> *(b) the issue or evidence would have resulted in the judge deciding a question before him at the extradition hearing differently;*
> *(c) if he had decided the question in that way, he would have been required to order the person's discharge.*

22. The relevant issue here, namely the application of art 3, was raised before the District Judge. It follows that this court may allow the appeal if the District Judge ought to have decided the question before him differently and if he had done so he would have been required to order the Appellant's discharge.

23. That is the equivalent of the question which arises on an appeal in a Part 1 case under section 27. In Celinski v Poland [2015] EWCH 124, a Part 1 case, the Lord Chief Justice, Lord Thomas, said at paragraph 24 that "*the single question which arises for the Appellate Court is whether or not the District Judge made the wrong decision*". The same analysis applies to a Part 2 case under section 104 and accordingly that is also the question for us. Whatever criticism there may be of the District Judge, and whatever we might make of it, the ultimate question for us is whether he made the wrong decision in sending the case to the Secretary of State for her to decide whether the Appellant should be extradited to the Russian Federation.

24. Nonetheless, the matter before us is an appeal, not a rehearing. The District Judge had the benefit of hearing live evidence. In particular, he saw and heard the two expert witnesses called by the Appellant being questioned and cross-examined. We have not had that advantage. It is appropriate, therefore, to defer to him on his assessment of that oral evidence. As the District Judge observed at page 7 of his judgment, however, there were no purely factual matters upon which he was invited to make findings. And on the interpretation of documentary material and assessment of submissions, we are in as good a position as him to reach a judgment.

25. It is noted that the first three of the letters from the Russian Prosecutor General were available to the District Judge; the last one, that of 7 February 2017, was obtained in preparation for this appeal. We admitted this material into evidence on this appeal, without objection from the Appellant.

The criticism of the District Judge's decision

26. The Appellant advances a number of serious criticisms of the District Judge orally but more particularly in his skeleton argument. In our judgment, many of these criticisms

are ill-founded. The tone of the Appellant's skeleton was unjustifiably personal in its attack on the District Judge.

27. In particular, we reject the suggestions that the District Judge "*misunderstood, the nature of the systemic art 3 violations in place"*, and failed, despite his assertion to the contrary, to read the decision in Othman v UK. Contrary to the Appellant's submissions, in our view the District Judge's reference to, and reliance on, Russia v Kononko and Russia v Zarmaev were entirely appropriate. And we see no grounds for criticism of his approach to the expert evidence and his failure to cite particular documents from amongst the vast quantity of documentary material before him (and us.).

28. In fairness to him, Mr Summers recognised and accepted these criticisms and his oral submissions were appropriately focused on the real issues in the case. In our judgment, the Appellant's case is better served by a dispassionate analysis of the evidence and the governing legal principles.

Discussion

The Applicable Principles

29. Art 3 ECHR provides that: "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*".

30. It is well established that art 3 may apply in extradition cases so as to prevent a member state of the Council of Europe from extraditing a person to a state that is not a member of the Council of Europe. In Soering v UK *(Application no. 14038/88)*, the case turned on what was called the "*death row phenomenon*" which would face the applicant were he extradited to the state of Virginia in the USA to face charges of murder. The Court held, at paragraph 91:

> "*the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 (art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 (art. 3) of the Convention... In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment."*

31. There is no reason in principle why Art 3 may not operate in the same way to prevent extradition to a Council of Europe member state, like Russia. However, membership of the Council of Europe is a highly relevant factor in deciding whether an extradited person would, in fact, be likely to suffer treatment contrary to art 3 if extradited there. In Targosinski v Poland [2011] EWHC 312 (Admin), Toulson LJ said at paragraph 5:

> *"The framework of the European Arrest Warrant scheme is constructed on a basis of mutual trust between the parties to the Convention, all of whom belong to the Council of Europe. The starting point is therefore an assumption that the requesting state is able to, and will, fulfil its obligations under the Human Rights Convention."*

32. That presumption, however, is rebuttable. In Krolik v Poland [2012] EWHC 2357 (Admin) at paragraph 3, Sir John Thomas P (as he then was) said:

> *"it is very clear from a long line of authority in this court that Poland, as a Member State of the Council of Europe, is presumed to be able and willing to fulfil its obligations under the Convention, in the absence of clear, cogent and compelling evidence to the contrary…In such a case it would have to be shown that there is a real risk of the requested person being subjected to torture or to inhuman or degrading treatment…" (emphasis added).*

33. Krolik was a Part 1 case; concerning as it did a requesting state which was a member of the European Union. In those cases the Court went on to hold that

> "*something approaching an international consensus is required, if the presumption is to be rebutted*."

34. Whether the case falls within Part 1 or Part 2, such a presumption is most clearly rebutted when the European Court of Human Rights ("the ECtHR") has issued a "pilot judgment" against the requesting state in question, identifying structural or systemic problems of wider significance. Rule 61 of the Court's rules provides as follows:

> *"1. The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications."*

35. Such a pilot judgment was delivered by the Court in Ananyev v Russia (2012) 55 EHRR 18. That case has featured large in this appeal and it is necessary to refer to it at a little length.

36. The ECtHR was concerned in Ananyev with applications by three Russian nationals lodged in 2007 and 2009. The essence of their allegations was that they had been detained in inhuman and degrading conditions (see paragraph 4 of the judgment). In particular, each of the three applicants complained that they were detained in overcrowded cells.

37. At paragraphs 139-142, the Court identified the proper approach to complaints of a breach of art 3. It is useful to set them out in full:

> *"139 The Court reiterates that art.3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of art.3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.*
> *140 Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of art.3*
> *141 In the context of deprivation of liberty the Court has consistently stressed that, to fall under art.3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with the detention. The state must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.*
> *142 When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. The length of the period during which a person is detained in the particular conditions also has to be considered."*

38. At paragraph 148 the Court set out its conclusions as to when overcrowding might involve a breach of art 3. It said:

> *"It follows that, in deciding whether or not there has been a violation of art.3 on account of the lack of personal space, the Court has to have regard to the following three elements:*
> *(a) each detainee must have an individual sleeping place in the cell;*
> *(b) each detainee must dispose of at least 3sqm of floor space; and*
> *(c) the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items.*
> *The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of art.3."*

39. The Court's conclusion on the facts of the cases before it is set out at paragraph 166:

> *"It has been established that the applicants Mr Ananyev and Mr Bashirov were afforded less than 3sqm of personal space. They remained inside the cell all the time, except for a one-hour period of outside exercise; they had to have their meals and answer the calls of nature in those cramped conditions. As far as Mr Bashirov is concerned, it is noted that he spent in those conditions more than three years. The Court therefore considers that the applicants Mr Ananyev and Mr Bashirov were subjected to inhuman and degrading treatment in breach of art.3 of the Convention."*

40. The court then considered the need for a pilot judgment:

> *"179 The Court notes that inadequate conditions of detention appear to constitute a recurrent problem in Russia which has led it to find violations of arts 3 and 13 of the Convention in more than 80 judgments that have been adopted since the first such finding in the Kalashnikov case in 2002. The Court therefore considers it timely and appropriate to examine the present case under art.46 of the Convention which reads, in the relevant part, as follows:*
> *"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.*
> *2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution…*
>
> *181 In order to facilitate effective implementation of its judgments along these lines, the Court may adopt a pilot-judgment procedure allowing it to clearly identify in a judgment the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent State to remedy them. This adjudicative approach is, however, pursued with due respect for the Convention organs' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under art. 46(2) of the Convention…*"

41. Pilot judgments represent a departure from the ECtHR's usual approach of only determining individual cases on their individual merits. Their application is confined to the identified structural or systemic problem, and there is an obvious danger in extrapolating from the facts that led the court to decide a pilot judgment was necessary to other circumstances relevant to the individual decision under consideration. In GS v Hungary [2016] 4 WLR 33 at paragraph 14, the Divisional Court (Burnett LJ and Ouseley J) said this about a pilot judgment involving overcrowding in Hungarian prisons:

> *"There was some debate before us whether the pilot judgment provides support for the proposition that, leaving aside personal space, the conditions in Hungarian prisons are such that there is always a real risk of a breach of article 3 on account of the other matters which weighed in the balance in some of the cases considered by the Strasbourg court in Varga . Read as a whole, it is clear that the judgment of the Strasbourg court was focussed on space and, in respect of the cases under consideration, in terms it rejected the submission that the supporting features could in themselves amount to a violation of article 3. Mr Bailin focussed on the observations in paragraph 78 of the judgment (summarised above) which suggest that even if a prisoner has between 3m2 and 4m2 of personal space there might be a violation of article 3 if sufficient other degrading features were in play. That was an example of Strasbourg court carefully avoiding drawing clear-cut boundaries in cases where an evaluation of a constellation of factors may be called for to answer the question whether there has been a violation of the Convention. As is well known, whilst the court lays down general principles its consideration of individual applications are very fact-specific."*

42. A pilot judgment will, within the scope of its application, displace the presumption that a Council of Europe country will honour its obligations under the Convention. In such circumstances, it will fall to the requesting state to show, that judgment notwithstanding, that the requested person will not be exposed to conditions contrary to art 3. In Badre v Italy [2014] EWHC 614 (Admin) Hickinbottom J (as he then was) said this:

> *"where the European Court of Human Rights has made a finding in a pilot judgment that the prison regime of a state is in systemic breach of Article 3, absent other specific evidence, there is a risk that, if detained in that prison system, a returned individual will be subjected to prison conditions that breach his human rights. Of course, it is open to that state to adduce evidence that there is no such risk. For example, it could produce evidence that, since the pilot judgment, prison conditions have improved, so that there is no longer a systemic problem with them; or give an assurance that, if the individual is returned and then detained, he will be kept in a particular prison (or in one of a number of identified prisons) which does not suffer from the general problem identified by the European Court."*

43. The requirements to be met if assurances are to serve that purpose was considered in Othman v UK (2012) 55 EHRR 1, a case where the UK Government relied on assurances from Jordan to meet concerns that return of Mr Othman to that country would expose him to a risk of treatment contrary to art 3. The Court held at paragraphs 188 to 189:

> *"188 In assessing the practical application of assurances and determining what weight is to be given to them, the preliminary question is whether the general human-rights situation in the receiving state excludes accepting any assurances whatsoever. However, it will only be in rare cases that the general situation in a country will mean that no weight at all can be given to assurances.*
> *189 More usually, the Court will assess first, the quality of assurances given and, second, whether, in light of the receiving state's practices they can be relied upon. In doing so, the Court will have regard, inter alia, to the following factors:*
> *(1) whether the terms of the assurances have been disclosed to the Court…;*
> *(2) whether the assurances are specific or are general and vague…;*
> *(3) who has given the assurances and whether that person can bind the receiving state…;*
> *(4) if the assurances have been issued by the central government of the receiving state, whether local authorities can be expected to abide by them…;*
> *(5) whether the assurances concerns treatment which is legal or illegal in the receiving state…;*
> *(6) whether they have been given by a Contracting State…;*
> *(7) the length and strength of bilateral relations between the sending and receiving states, including the receiving state's record in abiding by similar assurances…;*
> *(8) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers…;*
> *(9) whether there is an effective system of protection against torture in the receiving state, including whether it is willing to co-operate with international monitoring mechanisms (including international human-rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible…;*
> *(10) whether the applicant has previously been ill-treated in the receiving state…; and*
> *(11) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State…"*

44. Against the principles adumbrated in this section of the judgment, we turn to consider, first, the complaints about overcrowding in the SIZO in which the Appellant is likely to be held pending his trial, second, the complaints about matters other than overcrowding in SIZOs and about conditions in post-trial facilities generally and, finally, the complaints about medical facilities.

Pre-trial detention in Russia

The complaints about SIZOs and the reach of Ananyev

45. Subject to convincing evidence or a satisfactory assurance to contrary effect, the pilot judgment in Ananyev establishes that prisoners in Russian remand facilities will be subject to conditions that breach art 3. We address, first, the breadth of the application of the judgment in Ananyev, before turning to consider whether Russia has discharged the burden on it to displace the effect of the pilot judgment.

46. In reaching its decision on the pilot judgment, the Court in Ananyev referred, amongst other international material, to the recommendations of the Committee of Ministers of the Council of Europe on prison overcrowding (paragraph 57 and 58), and to the Interim Resolutions of the Committee of Ministers of the Council of Europe in relation, first, to the Kalashnikov v Russia case of 2002 (paragraph 59), and second, to the execution of the 31 judgments against Russia concerning conditions of detention in remand prisons (paragraph 60). The common theme of this material is overcrowding in remand prisons. In addition, the court referred to pilot judgments in Polish cases which related to overcrowding (paragraph 61).

47. The Court then turned to the question whether a pilot judgment was appropriate in the case before it. Whilst noting reports of unsatisfactory prison conditions generally, it observed that "*the problem of overcrowding in Russian remand centres has featured prominently on the agenda of the Committee of Ministers of the Council of Europe*…" (paragraph 187); that the "*Russian authorities did not deny the existence of a structural problem related to overcrowding in pre-trial detention facilities*" (paragraph 188) and that, notwithstanding "*a perceptible trend towards an improvement in material conditions of detention and a reduction in the number of prisoners awaiting trial, the urgency of the problem of overcrowding has not abated in recent years*" (paragraph 189).

48. The Court set out its conclusion at paragraph 190:

> *"Taking into account the recurrent and persistent nature of the problem, the large number of people it has affected or is capable of affecting, and the urgent need to grant them speedy and appropriate redress at the domestic level, the Court considers it appropriate to apply the pilot-judgment procedure in the present case. As it has emphasised above, the mere repetition of the Court's findings in similar individual cases would not be the best way to achieve the Convention's purpose. The Court thus feels compelled to address the underlying structural problems in greater depth, to examine the source of those problems and to provide further assistance to the respondent State in finding the appropriate solutions and to the Committee of Ministers in supervising the execution of the judgments."*

49. In our judgment, it is plain that the structural problems there referred to were those relating to overcrowding in remand prisons and that the pilot judgment in Ananyev is of no direct relevance to the complaints other than overcrowding.

The Russian Response

50. The response of the Russian authorities to the problem of over-crowding, as relevant to the present case, has been two fold.

51. First, it has instituted a reform process aimed at eliminating overcrowding. We note the report of the committee of the Council of Europe examining Russia's compliance with the pilot judgment and its expression of satisfaction that the action plan adopted by Russia was "*based on a comprehensive and long-term strategy for the resolution of the structural problem identified by the Court*". There is, however, no evidence before us that that strategy has yet fully been put into practice and nothing to suggest that the problem of over-crowding has been eliminated across the Russian pre-trial prison estate.

52. Second, the Russian authorities have made it clear where the Appellant would be held on his return to Russia and pending his trial; he will be held in SKU SIZO-1 of the main Department of the Federal Penitentiary Service of Russia for the Irkutsk region. However, since Russian SIZOs were the subject of the pilot judgment in Ananyev, the presumption that the Russian Federation will honour its obligations under the ECHR in respect of that pre-trial detention is displaced.

53. Recognising that, Mr Caldwell relies upon the letters of assurance from the Russian authorities. On their face, the Russian letters appear to show that that prison is not overcrowded. In the letter of December 2015 it was said that 1,064 prisoners were then housed in premises that could accommodate 1,438. In the letter of March 2016 it was said that 1,054 individuals were held in the same premises which continued to have the same capacity. That suggests that the population is tolerably stable and is significantly below maximum capacity.

54. Furthermore, in their evidence before the District Judge, the Appellant's two experts agreed that, in the light of the further information provided by Russia, the Appellant was indeed likely, on his return and pending trial on the third charge, to be held in the facility referred to in the further information, namely SIZO-1. In addition, the experts did not doubt the statistics relating to the occupancy level of that facility as far as they went. On that footing, the prison is not overcrowded.

Assurances

55. A conclusion that the Appellant will not be kept in overcrowded conditions depends, however, on the Russian authorities honouring the indications given in their letters, especially as to the particular SIZO in which the Appellant will be held and the nature of the regime to which he will be subject over the time he will be there.

56. In determining the quality and reliability of the Russian assurances we take into account the matters identified by the ECtHR in Othman (without treating that decision as a statute). We identify first the matters supportive of the Russian position: the letters from Russian authorities have been disclosed to the Court; the assurances as to the place of detention and overcrowding are specific to the relevant institution; the assurances have been given by the office of the Prosecutor General who has authority for ensuring the adequacy of prison conditions; the assurances have been issued by central government authorities and there is no reason to doubt that local authorities

will abide by them; the assurances concern treatment which is lawful under Russian law; Russia is a contracting state and, of particular significance in our view, the Appellant does not suggest he was ill-treated when last in detention in Russia.

57. Although there remain Othman factors of general concern, in particular as to torture, our focus has to be on the circumstances as they apply to this Appellant. As noted above, Russia is a Contracting State and the Appellant was not ill-treated when detained in Russia in the past. If there were in place assurances as to his future treatment which could be relied upon, the risk that the Appellant would be exposed to conditions contrary to art 3 in SIZO-1 would be markedly reduced.

58. It is here where we do have a number of serious concerns as to the phrasing and reliability of the assurances offered to date. First, although the further information from Russia, as far as it goes, provides adequate evidence about overcrowding at SIZO-1 and Russia's intention to detain the Appellant there, it fails to provide any assurance specific to the Appellant that he will be held there in conditions that are not overcrowded. In other words, it would be perfectly possible for the general occupancy level to be as the Prosecutor General indicates but for Mr Dzgoev to be held in a cell which was overcrowded, without breaching the strict terms of the assurances provided to date. That deficiency could be remedied with a more tightly drafted assurance.

59. Second, the evidence currently before us is less than satisfactory as to the mechanism by which compliance with the assurances can objectively be verified. It is suggested in the second of the letters from the Russian authorities that "*the state of lawfulness at the penitentiary bodies are under the permanent control of the prosecution bodies of the Russian Federation"*. While, on the evidence, it is correct that the Prosecutor General has the authority for ensuring the adequacy of prison conditions, the obvious difficulty is relying on the Prosecutor General alone to monitor and independently verify its own performance. Accordingly, the search for independent verification must hinge on the other mechanisms suggested.

60. The next suggestion advanced by the Prosecutor General's office in their third letter was that "the *consular officers of the British Embassy in Moscow will be allowed to visit (the appellant) at any time*". We accept that monitoring by British embassy staff may, in some cases, be appropriate and satisfactory. However, we do not see how that could work in practice in a case such as the present, where the detention facility in question is 1500 miles from the British Embassy. We regard the submission of Mr Caldwell, that the prison is only four hours away by plane and so could readily be visited, as wholly unrealistic.

61. It remains to consider the organisations called "ONK", the Public Oversight Commissions. These organisations are said by Professor Pallot to be "*the only (semi-) independent bodies in Russia to have statutory right to enter penal facilities*". It appears that, until recently, these bodies were able both to inspect prisons and to produce independent and, where necessary, critical reports. Professor Bowring, for example, refers to one such critical report on SIZO-1 following a visit there on 1 March 2015. That is precisely the sort of oversight and monitoring that we anticipate the ECtHR had in mind when it referred to objective verifications through monitoring mechanisms. It is the sort of monitoring which we would regard as satisfactory.

62. However, Professor Bowring also describes an erosion of the independence of ONKs as monitoring bodies, which he says "*reduces the prospect of prompt and effective reporting of conditions in Russian prisons*". Professor Pallot says that a Bill before the Duma, the Russian Parliament, which was due to come into law in 2016, would undermine the "*autonomy and independence*" of the ONKs by, in effect, placing them under the control of law enforcement agencies. That aside, we have seen no evidence as to whether that bill passed into law or as to how the ONKs now operate in practice. It seems to us necessary, therefore, that there should be an assurance to the effect that the ONK with responsibility for SIZO-1 is in a position to carry out its work as its predecessor was able to do.

63. Third, Othman directs our attention, in the context of considering bilateral relations between the two countries, to the receiving state's record in abiding by similar assurances. Mr Summers placed great reliance on what he says is Russia's repeated failure to comply with rule 39 indications from the ECtHR. But of rather greater moment, in our judgment, is Russia's history in respects of assurances in extradition cases.

64. Very recently, in Russia v Korolev Senior District Judge Arbuthnot had to consider assurances from the Russian Federation about overcrowding of a SIZO in which the requested person would be held. The requesting state relied on evidence from Professor R. Morgan who had visited two SIZOs and reported that the prisons were not overcrowded. At paragraph 131 of her judgment, the Senior District Judge said this:

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

65. That judgment and that observation notwithstanding, Russia continues to rely on Professor Morgan's report. The concluding observations in the report of the Prosecutor General's office of 16 March 2016 in the present case relies on Professor Morgan's conclusion that the conditions in the prisons he inspected were Article 3 compliant. The Prosecutor General does so with no reference either to the alleged decanting of prisoners from the prison in advance of the professor's visit nor to the fact, as stated by SDJ Arbuthnot, that he was lied to by the Russian authorities about that decanting. With respect, we are unable to accept Mr Caldwell's attempt to explain away the lie told to Professor Morgan.

66. That problem, however, could also be met by an assurance that, as regards the Appellant, he will at no time be held in a cell that does not provide him with the space specified by the ECtHR in Ananyev.

67. Pulling the threads together, it is to be recollected that in respect of overcrowding in SIZOs, it is for the Russian authorities to establish that the concerns expressed in

Ananyev have been dealt with. Accordingly, the importance of proper monitoring is self-evident in this case, so as to ensure that the assurances in respect of overcrowding given by the Russian authorities are honoured. This is especially so, given the unfortunate incident with Professor Morgan, discussed above. For these reasons, in our judgment, the evidence presently before us needs to be supplemented by further assurances.

68. We set out in the annex to this judgment a draft of the nature of the further assurances we have in mind. Subject to any further argument, were the CPS able to obtain such assurances, it is likely that we would conclude that this aspect of the appeal should be dismissed; if they are not, it is likely that the appeal would succeed on this ground.

Complaints other than overcrowding in SIZOs

69. Mr Summers argues that in addition to the risk of overcrowding in SIZO-1, the general conditions of that facility are so poor as to engage art 3. Those conditions were said to include including filthy and dilapidated cells, with unremitting or no lighting, pest infestation, unscreened toilet pans, fellow occupants with infectious diseases, lack of access to fresh air or showers, poor food and little opportunity for exercise. It was said that the facilities at SIZO-1 included "press cells" (where prisoners were said to be paid to pressurise others in order to extract information), and "disciplinary cells" (dark, damp, poorly heated or ventilated rooms).

70. As regards conditions in Russian correctional colonies, Mr Summers pointed to the effects of corruption, criminal sub-cultures, parallel illicit hierarchies of professional criminals, frequent prisoner-on-prisoner violence, what he called "forced labour", militarisation, harsh discipline, and bullying, all of which features he said were deliberately encouraged by the Russian State.

71. Mr Summers also pointed to what he described as "*overwhelming evidence that torture in Russian prisons is an enduring and systemic problem*". He cites the observation of Professor Pallot to the effect the Russian prisons are "*supremely unsafe places where prisoners can be subjected to bullying, pressure, victimisation, solitary confinement and torture*". He points to evidence from Professor Bowring concerning what he called "*credible evidence of the practice of torture within the Russian prison estate, particularly in post conviction prison colonies*."

72. These matters are indeed disturbing. However, there are five important considerations which point towards rejection of the Appellant's case in this respect.

73. First, we must take into account the fact that the Russian Federation is a member of the Council of Europe and a high contracting party to the European Convention on Human Rights which can be expected to comply with its obligations.

74. Second, Russia has given assurances to the effect that the Appellant will be treated in a manner consistent with art 3.

75. Third, we place very considerable reliance on the fact that the Appellant reports no ill-treatment during the time when he was held in detention in Russia previously. That is itself telling.

76. Fourth, we note the consideration that weighed heavily with the District Judge, namely that there is a powerful incentive for Russia to honour its obligations under the Convention and its assurances to the UK, namely its wish to ensure future extradition requests are met. That was the point made by the Chief Magistrate in the Zarmaev decision to which we have referred above. In our view, that was an entirely valid point.

77. Finally, and highly significant in this context, is the absence of any ECtHR authorities suggesting any structural problems in post-trial detention. There is, furthermore, no pilot judgment of the ECtHR in respect of post-trial prisons or in respect of conditions in pre-trial prisons other than overcrowding.

78. In Chankayev v Azerbaijan [2013] ECHR 1134) the Court was concerned with complaints about the likely prison conditions which the Applicant would face on his extradition from Azerbaijan to Russia. Reference was made to the Report of the Commissioner for Human Rights of the Council of Europe following his visit to the Russian Federation, the concluding observations adopted by the UN Committee against Torture at its session in October – November 2012 and the shadow report by Russian NGOs in October 2012. Those international reports recorded, amongst other complaints, suicides in prison, reports of over-crowding, reports of torture and ill treatment of prisoners, reports of the wide spread practice of torture including as a means to extract confessions, and lack of independent medical officials available to examine prisoners claiming to be the victims of abuse.

79. Against that background the Court considered whether there was a reasonable risk that the Applicant would be subjected to treatment proscribed by art 3 if extradited to Russia. At paragraph 72-74 the Court said this:

> *"72. As for any risk of ill-treatment in a penal facility for convicted prisoners, the Court notes that various country reports, obtained by it proprio motu, state that conditions in prisons and detention centres across Russia vary but are sometimes harsh, specifying such conditions as overcrowding, limited access to health care, food shortages, abuse by guards and inmates, and inadequate sanitation. However, it appears that those problems are reported in remand prisons in which only remand prisoners are accommodated. Moreover, none of these reports mention any noteworthy problems in connection with the treatment and detention conditions afforded in correctional facilities in general ….*
>
> *73. The Court itself has had to deal with a large number of applications concerning conditions of detention in various custodial facilities in Russia. However, the absolute majority of applications lodged with the Court where it has found a violation of Article 3 have concerned remand prisons (see the Annex in Ananyev …) By contrast, no serious structural problems have yet been identified in respect of conditions of detention in post-conviction facilities such as correctional colonies or prisons, where the applicant would be serving his sentence.*

> *74. Based on the available material, the Court considers that it has not been shown to the required standard of proof that the situation in Russian penal facilities for convicted prisoners is such as to call for a total ban on the extradition of convicted prisoners to that country, for instance on account of conditions of detention or a risk of ill-treatment of detainees."*

80. It follows that, whilst there is substantial evidence of poor conditions in some Russian prisons, we are unpersuaded that they displace the assumption of compliance by a member state of the Council of Europe on the facts of this case. Against the background we have set out, the evidence relied upon by Mr Summers falls some way short of establishing an international consensus, or clear, cogent and compelling evidence of a real risk of the Appellant being subjected to torture or to inhuman or degrading treatment.

81. In those circumstances we reject the argument that the Appellant would be exposed to conditions contrary to art 3 whilst held in detention after trial.

Healthcare and medical facilities

82. The Appellant asserts that he was diagnosed as being HIV positive in 2012. He relied on expert medical evidence from Dr RKW Lau, Consultant in genitourinary medicine at St. Georges Hospital, London. In a report dated 9 November 2015, Dr Lau says that the Appellant was first seen by HIV clinicians in HMP Wandsworth in September 2015. He says that he is co-infected with HIV and Hepatitis C and prior to his incarceration in the UK he had not received treatment for either condition. He says that the Appellant was treated with Truvada. Mr Summers says that if this treatment is discontinued or interrupted the condition would deteriorate and he would be at risk of developing AIDS.

83. It was argued that medical treatment in Russian prisons generally, but particularly in SIZOs was inadequate, especially for those, like the Appellant, who suffered from HIV and hepatitis C. Mr Summers argues that the evidence of that is overwhelming. He relies on the evidence of Professor Pallot suggesting that medical services available to prisoners in Irkutsk are "dire". Professor Pallot refers to a report of a local monitoring committee, ONK, to the following effect:

> "*About 400 men out of 1500 are HIV positive and many are suffering from TB and other serious illness. For months, these people cannot get an appointment with a doctor in a central hospital. In their own words, the prisoners say that "the journey for life" is not dependant on the correctional colony doctor's authorisation but on the officer in charge of internal discipline. If he wants you to go you go; if he doesn't want you to go he strikes you off the list.""*

84. Mr Caldwell submits in response that that this court has consistently affirmed that a breach of art 3 will not be established even if extradition would interrupt treatment or lead to deterioration in a medical condition or increased morbidity. He refers to N v UK [2008] 47 EHRR 39 (and its domestic predecessor at [2005] UKHL 31) and the case referred to by the District Judge, Mikolajczyk v Poland [2010] EWHC 3503

(Admin). We accept that submission. In our judgment, the proper conclusion was accurately summarised, in the context of a Latvian case, by Ouseley J in Balodis-Klocko v Latvia [2014] EWHC 2661 (Admin):

> *"The fact that somebody's health may be at greater risk in Latvia as a result of having commenced treatment in the United Kingdom, which is not provided in Latvia and that there is an increased risk of morbidity or mortality, does not mean that the high Article 3 threshold is crossed."*

85. The same principle applies in the present case. In those circumstances we reject the argument that the Appellant would be exposed to conditions contrary to art 3 by reason of the medical facilities in Russian prisons. Furthermore, in our view, there is no arguable case that, in all these circumstances, it would be unjust or oppressive to extradite the Appellant because of his physical or mental condition. Accordingly, we refuse permission to amend the grounds of challenge to advance a case under s91.

Conclusions

86. The challenge mounted by the Appellant based on the likely circumstances of his post-trial detention and the adequacy of medical facilities in both pre-trial and post-trial detention must fail, for the reasons we have given.

87. However, we stay the appeal advanced on the grounds related to detention before trial, pending receipt of further assurances as set out in the Annex. We require a response from the CPS within 42 days of the date of the handing down of this judgment. We give leave to apply, on a reasoned basis, to both parties as regards the wording of the further assurances and the timing for their production.

Annex

The Court invites the CPS to correspond with the Russian authorities seeking the Appellant's extradition with a view to securing assurances in the following terms:

1. The Russian Federation repeats its assurances contained in the letter of request for the Appellant's extradition and in the letters from the Prosecutor General's Office dated 18/12/2015, 29/12/2015, 16/03/2016 and 07/02/2017.

2. The Russian Federation guarantees that, throughout his time in detention before trial Stanislav Taimurazovich Dzgoev will be detained in Pretrial Detention Centre No 1 of the Department of the Federal Penitentiary Service of Russia in the Irkutzk Region.

3. The Russian Federation guarantees that, throughout his time in detention before trial, Stanislav Taimurazovich Dzgoev will be detained in a cell (i) where he has an individual sleeping place; (ii) where he has available for his own use at least 3sqm of floor space; and (iii) the overall surface of which is such as to allow him, and any detainees held in the same cell, to move freely between the furniture.

4. The Russian Federation guarantees that the ONK responsible for SIZO-1 continues to operate on the same independent basis as it did at the time of its report of March 2015 and will monitor regularly compliance with all the assurances set out above.

A transcript of this judgment should accompany the request for these assurances.

---------- o ----------

06/07/2017 Royal Courts of Justice, Strand, London, WC2A 2LL

POSTSCRIPT

to the Judgment of

Stanislav Dzgoev v Prosecutor General's Office of the Russian Federation

[2017] EWHC 735 (Admin)

1. In our judgment of 6 April 2017, we dismissed the challenge mounted by the Appellant based on the likely circumstances of his post-trial detention and the adequacy of medical facilities in both pre-trial and post-trial detention. However, we stayed the appeal advanced on the grounds related to detention before trial. We invited further assurances from the Russian authorities as specified in the annex to that judgment.

2. After a number of extensions of time for their provision, assurances of the type we specified have now been provided. We set out in the annex to this postscript copies of the assurances now provided, both in their original Russian and as translated.

3. In response to that development, those acting for the appellant have served a further expert report from Professor William Bowring, a copy of the Report to the Russian Government on the visit to the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and further written submissions. We have read all three documents with some care.

4. We take into account the fact, as noted in our judgment, that there was no complaint of ill-treatment by the appellant when he was last in detention in Russia. We remind ourselves that these additional assurances are being provided by the appropriate authorities of the Russian Federation, and that the Russian Federation is a member of the Council of Europe and a high contracting party to the European Convention on Human Rights. We note, in particular, that these assurances are provided to this Court to address particular concerns we articulated related to this individual appellant. The Russian Federation plainly has a strong interest in honouring these assurances.

5. In those circumstances, we are content to rely on those assurances. Accordingly, this appeal is dismissed.

Lord Justice Gross
Mr Justice Garnham

ANNEX

Translation from Russian. OH-2704-17

Prosecutor General's Office
Russian Federation

15A Bolshaya Dmitrovka,
Moscow, GSP-3, 125993, Russia

15.06.2017 Our ref. No. 81/3-432-2014
Your ref. No. _____

Ms. Kate Leonard
Specialist Prosecutor
Extradition Unit
Special Crime and Counter Terrorism Division
Crown Prosecution Service of England and Wales

Dear Ms. Leonard,

We have studied the decision of Her Majesty's High Court of Justice in England of 06.04.2017 in connection with examination of the request for extradition of Stanislav Taimurazovich Dzgoev.

Further to your request for additional information in connection with the said decision please be informed of the following.

The General Department of the Federal Penitentiary Service of Russia for the Irkutsk Oblast (hereinafter referred to as "GU FSIN of Russia for the Irkutsk Oblast") was requested to provide additional guarantees regarding pretrial detention center, where S.T. Dzgoev will be held in case he is extradited. Please see attached the report of the GU FSIN of Russia for the Irkutsk Oblast with the said guarantees.

On the first question. As a central authority for extradition the Prosecutor General's Office of the Russian Federation confirms all guarantees pertaining to extradition of S.T. Dzgoev previously given in the letters of 18th December 2015, 29th December 2015, 16th March 2016, 7th February 2017 as well as in the extradition request of 30th December 2014.

On the second question. We guarantee that during the period of pretrial detention before the court delivers a decision S.T. Dzgoev will be held in custody in the Federal Government Institution "Pretrial Detention Centre No. 1 of the General Department of the Federal Penitentiary Service of Russia for the Irkutsk Oblast".

This guarantee is confirmed by the heads of the GU FSIN of Russia for the Irkutsk Oblast.

On the third question. In compliance with Article 23 of Federal Law of the Russian Federation of 15.07.1995 No. 103-FZ "On Detention of Suspects and Accused of Commission of Crimes", the settled space norm in the cell for a single person is set at four square meters.

We guarantee that during the period of pretrial detention before the court imposes a sentence S.T. Dzgoev will be held in custody in a cell, where he will have an individual berth to sleep, he will be provided with at least 4 square meters of the room space for personal use, which will allow him and other persons, who are held in this cell, to move freely between the pieces of furniture.

This guarantee is confirmed by the heads of the GU FSIN of Russia for the Irkutsk Oblast.

Translated by Julia Gorina

On the fourth question. We guarantee that the Public Monitoring Commission operating on the territory of the Irkutsk Oblast can at any time carry out public control pertaining to the conditions of detention in the Federal Government Institution "Pretrial Detention Centre No. 1 of the General Department of the Federal Penitentiary Service of Russia for the Irkutsk Oblast".

For public control to be carried out regularly and timely the Public Monitoring Commission of the Irkutsk Oblast was informed of the possible extradition of S.T. Dzgoev to the Russian Federation and his arrival in SIZO-1.

This guarantee is confirmed by the heads of the GU FSIN of Russia for the Irkutsk Oblast.

Enclosure: on 8 pages.

Yours faithfully,

Acting Deputy Head
General Department of
International Legal Cooperation
Deputy Head
Extradition Department *[Signature]* Mr. S.V. Gorlenko

Handling officer: Ms. N.N. Kot
e-mail: kot.n@genproc.gov.ru

Translated by Julia Gorina

Генеральная прокуратура
Российской Федерации

ул. Б. Дмитровка, 15а
Москва, Россия, ГСП-3, 125993

15. 06.2017 81/3-432-2014
№

На №

Королевская прокурорская служба
Англии и Уэльса

Отдел экстрадиции

Подразделение по особым
преступлениям
и борьбе с терроризмом

специальному прокурору

г-же Кейт Леонард

Уважаемая госпожа Леонард!

Мы ознакомились с решением Высокого Королевского суда Лондона от 06.04.2017 в связи с рассмотрением запроса о выдаче Дзгоева Станислава Таймуразовича.

На Ваш запрос о предоставлении дополнительной информации в связи с данным решением сообщаем следующее.

В Главном управлении Федеральной службы исполнения наказаний Российской Федерации по Иркутской области (далее сокращенно - ГУ ФСИН России по Иркутской области) запрошены дополнительные гарантии, касающиеся следственного изолятора, в котором, в случае выдачи, будет содержаться Дзгоев С.Т. Справка ГУ ФСИН России по Иркутской области с данными гарантиями прилагается.

По первому вопросу. Генеральная прокуратура Российской Федерации, как центральный орган по вопросам выдачи, подтверждает все ранее данные гарантии в отношении выдачи Дзгоева С.Т. в письмах от 18 декабря 2015 года, 29 декабря 2015 года, 16 марта 2016 года, 07 февраля 2017 года, а также в запросе о выдаче от 30 декабря 2014 года.

По второму вопросу. Гарантируем, что в течении периода предварительного заключения до вынесения приговора судом Дзгоев С.Т. будет находиться под стражей в Федеральном казенном учреждении Следственный изолятор № 1 Главного управления Федеральной службы исполнения наказаний Российской Федерации по Иркутской области.

Данная гарантия подтверждается руководством ГУ ФСИН России по Иркутской области.

По третьему вопросу. В соответствии со статьей 23 Федерального закона Российской Федерации от 15.07.1995 № 103-ФЗ «О содержании под стражей подозреваемых и обвиняемых в совершении преступлений» норма

АС № 807601

Генеральная прокуратура Российской Федерации
№81/3-432-2014/Нд22161-17

санитарной площади в камере на одного человека устанавливается в размере четырех квадратных метров.

Гарантируем, что в течении периода предварительного заключения до вынесения приговора судом Дзгоев С.Т. будет находиться под стражей в тюремной камере, где у него будет индивидуальное место для сна, где ему будет предоставлено для личного пользования минимум 4 квадратных метра площади помещения, которая позволит ему и другим заключенным, находящимся в данной камере, двигаться свободно между предметами мебели.

Данная гарантия подтверждается руководством ГУ ФСИН России по Иркутской области.

По четвертому вопросу. Гарантируем, что Общественная наблюдательная комиссия, действующая на территории Иркутской области, в любое время может осуществить общественный контроль по условиям содержания в Федеральном казенном учреждении Следственный изолятор № 1 Главного управления Федеральной службы исполнения наказаний Российской Федерации по Иркутской области.

В целях регулярного и своевременного осуществления общественного контроля Общественная наблюдательная комиссия Иркутской области уведомлена о возможной выдаче Дзгоева С.Т. в Российскую Федерацию и прибытии его в СИЗО-1.

Данная гарантия подтверждается руководством ГУ ФСИН России по Иркутской области.

Приложение: на 8 л.

С уважением,

И.о. заместителя начальника Главного управления
международно-правового сотрудничества –
начальника управления экстрадиции С.В. Горленко

Исп. Кот Н.Н.
эл. адрес:kot.n@genproc.gov.ru

ФЕДЕРАЛЬНАЯ СЛУЖБА ИСПОЛНЕНИЯ НАКАЗАНИЙ
ГЛАВНОЕ УПРАВЛЕНИЕ ПО ИРКУТСКОЙ ОБЛАСТИ
(ГУФСИН РОССИИ ПО ИРКУТСКОЙ ОБЛАСТИ)
Баррикад ул., д. 57, г. Иркутск, 664001
телефон: 33-97-56
факс: 34-58-00
e-mail: postmaster@guin.irkutsk.ru

11.05. 2017 № 39/ТО/9/2- 5001

Прокурору Иркутской области
государственному советнику
юстиции 2 класса

Мельникову И.А.

В соответствии с поручением о предоставлении дополнительных гарантий по решению Высокого Королевского Суда Лондона от 06.04.2017, касающихся следственного изолятора, в котором, в случае выдачи, будет содержаться Дзгоев С.Т., направляем Вам справку о возможности и условиях содержания под стражей в ФКУ СИЗО-1 ГУФСИН России по Иркутской области осужденного Дзгоева С.Т.

Приложение: справка на 3 л.

Врио начальника
полковник внутренней службы А.И. Гиричев

Chief Department of Federal Penitentiary
Service of Irkutsk region
664001 Irkutsk, 57 Barrikad St.
Phone: 33-97-56, fax: 34-58-00
e-mail: postmaster@guin.irkutsk.ru
No. 39/TO/9/2-5007 dated 11.05.2017

Legal Counsellor of State, 2nd class

Melnikov I.A.

In accordance with the instructions to provide additional guarantees by resolution of Her Majesty's High Court of Justice in England dated 06.04.2017, in relation to pretrial detention center, where, if extradited, Dzgoev S.T. will be held in custody, attached please find the reference about the possibility and conditions of keeping the convicted offender Dzgoev S.T. in custody at Federal Public Institution Pretrial Detention Center No.1 of Chief Department of Federal Penitentiary Service of Russia in Irkutsk region

Attachment: Reference in 3 pages

First Deputy Chief
Chief Department of Federal Penitentiary Service of Irkutsk region

Colonel of Internal Service *[signature]* A.I. Girichev

СПРАВКА

Главным управлением Федеральной службы исполнения наказаний России по Иркутской области о возможности и условиях содержания под стражей осужденного Дзгоева С.Т. сообщается следующее.

Дзгоев Станислав Теймуразович, 14.12.1987 года рождения, уроженец с. Кослан Удорского района Коми-Пермяцкого автономного округа, гражданин Российской Федерации, со средне-специальным образованием, проживавший по адресу: Иркутская область, г. Иркутск, ул. Профсоюзная, 64-67, ранее судимый, в случае его выдачи Соединенным Королевством Великобритании и Северной Ирландии будет содержаться под стражей в Федеральном казенном учреждении Следственный изолятор № 1 Главного управления Федеральной службы исполнения наказаний России по Иркутской области (далее СИЗО-1).

Содержание Дзгоева С.Т. в СИЗО-1 г. Иркутска обусловлено его перечислением за Кировским районным судом г. Иркутска, в производстве которого находится уголовное дело, для привлечения к ответственности по которому запрошена его выдача в Российскую Федерацию. Место содержания Дзгоева С.Т. под стражей согласовано с Кировским районным судом г. Иркутска, который будет незамедлительно уведомлен администрацией СИЗО-1 о его прибытии.

Условия содержания подозреваемых, обвиняемых и осужденных в СИЗО-1 соответствуют требованиям Российского уголовно-исполнительного законодательства и Федерального закона №103-ФЗ от 15.07.1995 «О содержании под стражей подозреваемых и обвиняемых в совершении преступлений», а также стандартам, изложенным в Конвенции о защите прав человека и основных свобод от 04.11.1950 и Европейских пенитенциарных правилах от 11.01.2006.

В случае выдачи и прибытия Дзгоева С.Т. в СИЗО-1 он будет в течение периода предварительного заключения до судебного разбирательства находиться под стражей в тюремной камере, где у него будет индивидуальное место для сна, ему будет предоставлено для личного пользования не менее 4-х квадратных метров площади помещения, которая позволит ему и любым заключенным, находящимся в данной камере, передвигаться свободно между предметами мебели.

Посещениями и проверками прокуратуры Иркутской области, членами Общественной наблюдательной комиссии области, Уполномоченным по правам человека в Иркутской области, нарушений условий содержания подозреваемых, обвиняемых и осужденных в СИЗО-1 не выявлено.

При лимите наполнения 1438 человек, по состоянию на 11.05.2017 в следственном изоляторе содержится 900 лиц, общая площадь камерных помещений составляет 6526,6 $м^2$. Средняя площадь, приходящаяся на 1 подозреваемого, обвиняемого или осужденного, составляет 7.25 $м^2$

Оборудование всех камер соответствует требованиям Приказа Минюста России от 28.05.2001 № 161 «Об утверждении норм проектирования следственных изоляторов и тюрем Минюста России», укомплектованы

необходимым количеством мебели и инвентарем. Санитарное состояние, температурный режим, освещение, влажность, соответствуют установленным нормам.

Материально-бытовое и медико-санитарное обеспечение содержащихся в изоляторе лиц соответствует положенным нормам и требованиям законодательства, все обвиняемые, подозреваемые и осужденные обеспечены индивидуальными спальными местами, постельными, столовыми и санитарно-гигиеническими принадлежностями, выдаваемыми учреждением.

Питание содержащихся в учреждении лиц производится в соответствии с требованиями приказа Минюста России от 02.08.2005 № 125 «Об утверждении норм питания и материально-бытового обеспечения осужденных к лишению свободы, а также подозреваемых и обвиняемых в совершении преступлений, находящихся в следственных изоляторах Федеральной службы исполнения наказаний, на мирное время».

Содержащиеся в СИЗО-1 лица пользуются ежедневными прогулками установленной продолжительностью не менее 1 часа и правом на свидания с родственниками и защитниками.

На территории СИЗО-1 функционирует Больница № 3 ФКУЗ МСЧ-38 ФСИН России для подозреваемых, обвиняемых и осужденных на 460 коек, в которой, по состоянию на 11.05.2017, находится на лечении 92 человека.

Организация медицинского обеспечения подозреваемых, обвиняемых и осужденных, в том числе, ВИЧ-инфицированных, осуществляется на основании требований действующего законодательства, приказа Министерства здравоохранения и социального развития России и Минюста России от 17.10.2005 № 640/190 «О порядке организации медицинской помощи лицам, отбывающим наказание в местах лишения свободы и заключенным под стражу».

Обеспечение медицинскими лекарственными препаратами Больницы № 3 ФКУЗ МСЧ-38 ФСИН России осуществляется надлежащим образом на основании заявок, согласованных с Министерством здравоохранения России. Необходимые лекарственные препараты в настоящее время имеются в наличии в достаточном объеме.

Согласно требованиям ст. 73 Уголовно-исполнительного кодекса Российской Федерации, осужденные к лишению свободы, как правило, отбывают наказание в исправительных учреждениях в пределах субъекта Российской Федерации, в котором они проживали или были осуждены.

Вопрос о распределении осужденного в конкретное исправительное учреждение для отбывания наказания может быть решён только после вынесенного приговора суда, вступившего в законную силу и поступившего в СИЗО-1.

В соответствии с Федеральным законом от 10.06.2008 № 76-ФЗ «Об общественном контроле за обеспечением прав человека в местах принудительного содержания и о содействии лицам, находящимся в местах принудительного содержания» на территории Иркутской области действует Общественная наблюдательная комиссия, члены которой посещали СИЗО-

в течение 2015 года – 251 раз, в 2016 году – 164 раза, с начала 2017 года - 11 раз.

В ходе посещений членами Общественной наблюдательной комиссии проверяется соблюдение администрацией СИЗО-1 прав человека, предусмотренных действующим Российским и международным законодательством, норм материально-бытового и медико-санитарного обеспечения подозреваемых, обвиняемых и осужденных, оборудование и санитарно-гигиеническое состояние камер, в которых содержатся заключенные под стражу лица, в том числе камерные помещения осматриваются, а лица, в них содержащиеся, опрашиваются наедине на предмет нарушения их прав, фактов бесчеловечного или жестокого обращения с ними.

В своей деятельности члены Общественной наблюдательной комиссии независимы и неподконтрольны правоохранительным органам, вместе с тем они активно взаимодействуют с Уполномоченным по правам человека в Иркутской области, органами прокуратуры по вопросам надзора за соблюдением закона в местах принудительного содержания граждан.

С октября 2016 года, в связи с истечением срока полномочий прежнего состава, в результате выборов образован новый состав комиссии, в которую вошли научные работники, практикующие юристы, члены общественных организаций. Председателем комиссии избран Антипенко О.Н., который по профессии является журналистом.

В целях регулярного и своевременного осуществления общественного контроля Общественная наблюдательная комиссия Иркутской области уведомлена о возможной выдаче Дзгоева С.Т. в Российскую Федерацию и прибытии его в СИЗО-1.

Врио начальника
ГУФСИН России по Иркутской области
полковник внутренней службы А.И. Гиричев

REFERENCE

Chief Department of Federal Penitentiary Service of Russia in Irkutsk region herewith informs of the following in relation to custody of the convicted offender Dzgoev S.T.

Dzgoev Stanislav Teimurazovich, date of birth: 14.12.1987, born in the settlement of Koslan, Udorsky district, Komi-Permyatsky autonomous area, citizen of the Russian Federation, with vocational education, residing at: Irkutsk region, city of Irkutsk, 64 Profsoyuznaya St., Apt. 67, with record of prior convictions, if extradited by the United Kingdom of Great Britain and Northern Ireland, will be held in custody at Federal Public Institution Pretrial Detention Center No.1 of Chief Department of Federal Penitentiary Service of Russia in Irkutsk region (hereafter "SIZO-1").

Custody of Dzgoev S.T. at SIZO-1 of Irkutsk is determined by the fact of his criminal prosecution by Kirovsky district court of the city of Irkutsk, which is currently hearing the case, requiring the convict's extradition to the Russian Federation to be prosecuted. Place of custody of Dzgoev S.T. has been approved by Kirovsky district court of the city of Irkutsk, which will be notified immediately by the administration of SIZO-1 of the convict's arrival.

The conditions of custody of suspects, accused and convicts at SIZO-1 comply with the requirements of the Russian penitentiary law and Federal Law No. 103-FZ dated 15.07.1995 "On custody of suspects and accused of crimes", as well as standards provided in Convention for the Protection of Human Rights and Fundamental Freedoms dated 04.11.1950 and the European Penitentiary Rules dated 11.01.2006.

In case of extradition and arrival of Dzgoev S.T. to SIZO-1, until the trial, he will be placed in a guarded prison cell, where he will have an individual bed to sleep; he will have at least 4 square meters of area for personal use inside the cell, which enables him and other imprisoned persons to move freely between furniture items.

No violations in custody conditions of suspects, accused or convicts at SIZO-1 were found during visits and inspections by the Prosecutor's Office of Irkutsk Region, members of the Public Supervisory Commission of the region, Human Rights Commissioner of Irkutsk region.

The institution has maximum capacity of 1438 prisoners, while as of 11.05.2017, the pretrial detention center holds only 900 persons. Total area of cells is 6526.6 m^2. Average area per 1 suspect, accused or convict is 7.25 m^2.

Equipment of all cells meets the requirements of the Order of the Ministry of Justice of Russia dated 28.05.2001 No. 161 "On approval of the norms for design of pretrial detention centers and prisons of the Ministry of Justice of Russia" and all cells are equipped with necessary amount of furniture and accessories. Sanitary condition, temperature regime, lighting and humidity meet the established norms.

Persons held at the pretrial detention center are provided with all material, personal hygiene, medical and sanitary resources according to applicable norms and legal requirements. The institution provides all suspects, accused and convicts with individual beds for sleeping, linen, utensils, sanitary and hygiene accessories.

Persons held at the pretrial detention center are provided with meals

corresponding to the Order of the Ministry of Justice of Russia dated 02.08.2005 No.125 "On approval of catering and material/personal hygiene norms for suspects, accused and convicts held in pretrial detention centers of the Federal Penitentiary Service, during peace time".

Persons held at the pretrial detention center SIZO-1 are allowed daily walks with established duration of at least 1 hour, and the right to be visited by relatives and defense counsels.

The territory of SIZO-1 accommodates the fully functioning Hospital No.3 of Federal Public Institution of Health Care Medical and Sanitary Unit-38 of Federal Penitentiary Service of Russia for suspects, accused and convicts, with capacity of 460 beds. As of 11.05.2017, the hospital has 92 in-patients.

Organization of medical aid to suspects, accused and convicts, including HIV-positive individuals, meets the requirements of effective laws, the Order of Ministry of Public Health and Social Development of Russia and Ministry of Justice of Russia dated 17.10.2005 No. 640/190 "On procedure of organization of medical aid to imprisoned convicts and persons held in custody".

Hospital No.3 of Federal Public Institution of Health Care Medical and Sanitary Unit-38 of Federal Penitentiary Service of Russia is provided with necessary medical supplies and medicines in due manner, according to applications approved by the Ministry of Public Health of Russia. At present, all necessary medical supplies and medicines are available in sufficient quantities.

According to provisions of Article 73 of Criminal Penitentiary Code of the Russian Federation, convicts are, as a rule, sentenced to serve punishment in penitentiary institutions located in the same region of the Russian Federation, where they were convicted, or where they resided prior to conviction.

The decision on allocation of a convict to a particular penitentiary institution for serving the sentence may only be passed upon delivery of the judgment, acquisition of its full legal force and receipt by SIZO-1.

Pursuant to Federal Law dated 10.06.2008 No. 76-FZ "On public control over defense of human rights in institutions of custody and on cooperation with persons placed in custody institutions", the Public Supervisory Commission operates in Irkutsk region. Members of the above-mentioned commission visited SIZO-1 on 251 occasions in 2015, on 164 occasions in 2016, and on 11 occasions since the beginning of 2017.

In the course of visits by members of the Public Supervisory Commission, its members inspect compliance with human rights norms on behalf of the administration of SIZO-1, as provided by effective Russian and international laws, norms of material/personal hygiene, medical and sanitary resources for suspects, accused and convicts, the equipment and sanitary condition of the cells, where persons in custody are being held, including visual inspection of prison cells and private interviews with the persons in custody with regard to any violations of their human rights, facts of inhumane or abusive treatment.

Members of Public Supervisory Commission are independent in their activity and not subject to control of law enforcement agencies. At the same time, members of the above-mentioned commission actively interact with the Human Rights

Commissioner of Irkutsk region, divisions of the Prosecutor's Office of Irkutsk region in matters of supervision over compliance with legal requirements pertaining to custody institutions.

Since October 2016, due to expiry of the term of previous commission members, the public election resulted in a new set of commission members, which include prominent researchers, practicing lawyers, members of non-governmental organizations. Antipenko O.N., a professional journalist, was elected the commission's chairperson.

For the purpose of scheduled and prompt execution of public control, the Public Supervisory Commission of Irkutsk region has been notified of possible extradition of Dzgoev S.T. to the Russian Federation and his arrival to SIZO-1.

First Deputy Chief
Chief Department of Federal Penitentiary Service of Irkutsk region

Colonel of Internal Service *[signature]* A.I. Girichev

Federal Penitentiary Service to: Prosecutor of Irkutsk region