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Focus

**Russian Federation v.  
Akhmed Zakaev**

13 November 2003

The decision of the Bow Street Magistrates' Court is available at <http://eng.kavkaz.memo.ru/print/enganalytics/id/611249.html>

**Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction**

2 October 1995

available at <http://www.un.org/icty/tadic/appeal/decision-e/51002.htm>

**Visit by the Special Rapporteur on Torture to the Russian Federation**

16 November 1994

United Nations Document E/CN.4/1995/34/Add.1

"[t]he conditions are cruel, inhuman and degrading; they are torturous. To the extent that suspects are confined there to facilitate the investigation by breaking their wills with a view to eliciting confessions and information, they can properly be described as being subjected to torture" (para. 71)

**The judgement on the extradition of Zakaev to Russia**

The extradition case of the Chechen deputy prime minister, Akhmed Zakaev, came to a close on 13 November 2003 when British Judge Workman declared that Mr. Zakaev should not be returned to face trial in the Russian Federation. The Russian Federation had sought to extradite Zakaev on a series of charges including murder. According to the regime of the European Convention on Extradition, the requested court may not "enquire into whether there is sufficient evidence to support these charges" as long as the formal requirements are met. Consequently, the Judge had to examine whether the charges were extraditable offences and whether the accused fell within the exceptions contained in the Convention and the 1978 Suppression of Terrorism Act.

The Chief Magistrate examined whether the conduct for which Mr. Zakaev was to be extradited amounted to crimes in the United Kingdom. Extradition is allowed only if the acts, stipulated in the request, are also categorised as criminal by the domestic law of the requested state. The defence argued that the charge of murder could not stand if an armed conflict took place in Chechnya. This is because the killing of combatants in times of armed conflict cannot be prosecuted. Consequently, the Court needed to examine whether an armed conflict occurred in Chechnya in 1995-1996. The Court pointed at the "scale of the fighting" and "the recognition of the conflict in the terms of a cease fire and a peace treaty". Although there is no reference to the ICTY case, these were the two elements enounced in the *Tadic* Appeal on Jurisdiction judgement. The Appeals Chamber of the ICTY noted that "an armed conflict exists whenever there is [...] protracted armed violence between governmental authorities and organised armed groups" (para. 70) and that in the case of a non-international armed conflict "[i]nternational humanitarian law [...] extends beyond the cessation of hostilities until [...] a peaceful settlement is achieved" (para. 70). The Chief Magistrate concluded that "those crimes which allege conspiring to seize specific areas of Chechnya by the use of armed force or resistance are not extraditable crimes because the conduct of those circumstances would not amount to a crime in this country." However, the existence of an internal armed conflict did not relieve the accused from the allegations of murder of civilians and since murder cannot be considered as a political exception, i.e. an exemption to extradition under Section 6 (1)(a) of the 1978 Suppression of Terrorism Act, those charges were extraditable crimes.

The defence argued that it was unjust or oppressive to extradite Mr. Zakaev under sections 6 (1)(c), 6(1)(d) and 11 of the same Act. The judge noted the delays of the Russian procedure. First, the crimes for which extradition were sought were committed in 1995 and 1996. Second, the arrest warrant was only issued in 2001 and despite the existence of this warrant, Mr. Zakaev met later with Russian officials in November 2001. Third, most witnesses to the alleged crimes made their statements after Mr. Zakaev's arrest. Fourth, some of the allegations presented to the Danish authorities to whom an extradition request had been sent in autumn 2001 by the Russian authorities, proved to be false. The Judge found that evidence of the delay taken with corroborated evidence that the aim of the extradition request, the arrest and trial of Mr. Zakaev was to "exclude Mr. Zakaev from continuing to take part in the peace process and to discredit him as a moderate" was sufficient to make out the ground that the Russian government was seeking "extradition for purposes of prosecuting Mr. Zakaev on account of his nationality and his political opinions."

The Judge also found that the ground laid out under article 6(1)(d) was made out. He held that there was a risk that Mr. Zakaev may be tortured upon return. Although he believed that the Deputy minister responsible for Russian prisons stated in good faith that Mr. Zakaev "would come to no harm whilst he was detained in a Russian Ministry of Justice institution", he concluded that it was difficult to enforce such undertaking having regard to the state of Russian prisons. The judge notably referred to documents produced by the European Anti-Torture Committee and the UN Committee on Torture. What really convinced Judge Workman to refuse the extradition of Mr. Zakaev was the treatment of one of the witnesses who had been tortured to make false allegations against Mr. Zakaev. Reluctantly, the Judge stated that he believed Mr. Zakaev would be subjected to torture if returned to Russia to stand trial.

This case shows the sort of circumstances under which a court in the UK might refuse to extradite someone on the basis that he/she might suffer torture/ill-treatment and on abuse of process. It also shows that an unreliable case had been prepared by the Russian judicial authorities. This clearly points the finger at the procuracy and at the necessity to amend again the Russian Criminal Procedure Code and bring it into conformity with both the national standards enshrined in the Russian Constitution and with international standards.

**Responsibility**

BOFAXEs are published by the Institute for International Law of Peace and Humanitarian Law of the Ruhr-University Bochum: IFHV, NA 02/33 Ruhr-Universität Bochum, 44780 Bochum. Tel: 0049234/3227366, Fax: 0049234/3214208.

BOFAXEs are supported by the German Red Cross. **The writer is solely responsible for the content.**