JUSTICE

AUSTRIAN REPUBLIC 22 Bs 136/22v

Vienna Higher Land Court

The Higher Land Court of Vienna, represented by Judge Mag. Pasching as presiding judge, Judge Dr. Eichinger and Judge Mag. Stahribacher as members of the judicial panel, decides in the case concerning the extradition of **Dmytro Firtash** to the United States of America for the purpose of criminal prosecution, after examining his appeal against the determination of the Vienna Land Criminal Court in case No. 313 HR 62/13k-268 of March 15, 2022, in closed session, as follows

Ruling:

The appeal is **granted to** the extent that the contested determination is set **aside** and the reopening of the extradition proceedings under Article 39 of the Extradition and Legal Assistance Act is **allowed.**

The decisions of the Vienna Higher Land Court in Case No. 22 Bs 291/15b of February 21, 2017 and of the Vienna Criminal Land Court in Case No. 313 HR 62/13k-140 of April 30, 2015 are declared annulled pursuant to Section 9(1) of the Extradition and Legal Assistance Act in conjunction with Section 358(1) of the Code of Criminal Procedure.

Substantiation:

In a letter from the United States Department of Justice (USA) dated October 30, 2013, the USA sent a request for preliminary detention of the citizen of Ukraine Dmytro Firtash, born on 02.05.1965, for the purpose of his extradition (Document No. 2, Document No. 6). After court authorization for the arrest warrant was obtained on November 1, 2013 (Document No. 4), it was withdrawn by the Central Prosecutor's Office for Combating Economic Crimes and Corruption on November 4, 2013 (Document No. 10a, p. 1).

In its notes dated February 27, 2014 (Document No. 11, p. 5) and March 11, 2014 On March 12, 2014 (Document No. 12, p. 19), the United States again requested the provisional arrest of the person concerned, after which he was taken to the Vienna-Josefstadt Prison on the same day on the basis of an arrest warrant issued by the court on March 12, 2014 (Document No. 14) (Document No. 15). By a ruling of the Vienna State Criminal Court dated March 14, 2014 (Document No. 20), a preventive measure in the form of extradition arrest was imposed on the person concerned, but he was promised release from custody

with the application of more lenient preventive measures (bail, oaths and instructions). After posting bail, taking oaths and taking note of the instructions, he was released from extradition arrest on March 21, 2014 (Document No. 32).

In a Department of Justice note dated March 31, 2014 (Document No. 43, p. 7 et seq.), the United States filed an extradition request for Dmytro Firtash for the purpose of prosecuting him for the criminal acts specified in the extradition request.

According to an indictment (*Indictment*, Document No. 41) filed on June 20, 2013, against the affected person under 13 CR 515 in the United States federal district court for the Northern District of Illinois, said person is suspected of committing criminal acts that U.S. criminal prosecuting authorities characterize as conspiracy , directed at organized crime (title 18, U.S.C. § 1962 [d]), conspiracy to launder money (title 18, U.S.C. § 1956 [h] and § 2), transnational travel to other nations in support of organized crime (title 18, U.S.C. § 1952 and § 2), and conspiracy to bribe a foreign official (title 18, U.S.C. § 371 and § 2).

According to its summary, Dmytro Firtash is suspected of running a criminal association to which Andras Knopp, Suren Gevorgyan, Gajendra Lal, Periyasamy Sunderalingam, KVP Ramahandra Rao and other partly known, partly unknown persons belonged, who, beginning in 2006, paid bribes in connection with a mineral project (ilmenite, titanium ironstone) in the Indian state of Andhra Pradesh to officials of the Government of Andhra Pradesh and the central government in order to obtain the necessary licenses for mining. In this regard, the affected person allegedly personally directed the payment of bribes totaling $18.5 million to various officials and, in addition, instructed his employees to forge documents to create the appearance of a legitimate, businesslike payment background. The mining project was promoted using, among other things, funds from Group DF, a company owned by the affected person, with the financial means used to transfer the bribes.
U.S. agencies. In addition, transportation and communication structures within the U.S. were also allegedly used to coordinate the bribery of Indian employees.

In Determination No. 313 HR 62/13k-140 of April 30, 2015, a single judge of the Vienna County Criminal Court found the requested extradition due to lack of sufficient suspicion of a crime based on extradition documentation inadmissible (Document No. 140, p. 207).

With regard to the possibility of providing additional documents later on in a possible appeal, the judge also considered Art. 3 of Article 4 of the Extradition Treaty between the Government of the Republic of Austria and the Government of the United States of America (Federal Law Gazette III 1999/216 in the current version of Federal Law Gazette III 2010/5) (hereinafter briefly referred to as the "Extradition Treaty with the United States"). According to the treaty, extradition should be refused if - irrespective of the suspicion of a crime and of

the crime itself - the motives that would lead to an extradition request are (at least partly) political in nature (Document No. 140, p. 213 ff.). This provision should be understood to mean that any kind of political motivation for an extradition request - whether it relates to domestic politics, geopolitics, economic policy or political power - should lead to a refusal of extradition (Doc. 140, p. 217).

After an extensive statement of his views on the matter (Document No. 140, p. 221 ff.), the single judge confirmed the political motives behind the extradition request. To substantiate his assumption, he not only elaborated on the personality of Dmytro Firtash and the recent history of Ukraine, highlighting the influence of the person concerned, to whom he still, despite the extradition case, attributes political weight in Ukraine, but also described, taking into account the economic interests of the United States, also the "gas crises" of 2006 and 2009 in the context of the activities of the person concerned in the gas trade as well as his conflict with the Prime Minister of Ukraine, Yulia Tymoshenko (Document No. 140, p. 221 ff.).

With regard to Dmytro Firtash's political activity, he also drew close attention to his support for Viktor Yanukovych in the 2010 presidential election campaign, which he assessed to be contrary to US interests, and referred to witness Wolfgang Puczek's assessment that the US had sought as early as 2006 to "drive the company led by the affected person (and therefore himself) out of the gas market" (Document No. 140, p. 299).

Finally, he drew detailed comparisons between the events in Ukraine and the actions of the US agencies in the present extradition request (Document No. 140, p. 323 ff.). In doing so, he established, in particular, a link between the withdrawal of the first request for the arrest of Dmytro Firtash of October 30, 2013, on November 1, 2013, and the planned signing of the Association Agreement between the European Union and Ukraine at the end of November 2013, as well as the visit of Victoria Nuland, Assistant Secretary of State for European and Eurasian Affairs at the U.S. Department of State, to Ukraine (Document No. 140, pp. 335 et seq.). On February 27, 2014, the Sole Judge linked the (repeated) request for provisional detention of the affected person to President Yanukovych's refusal to sign the Association Agreement, the resulting wave of protest ("Euromaidan", Document No. 140, p. 347) and the announcement by Yulia Tymoshenko and Vitali Klitschko that they would stand as candidates in the presidential election. Referring to the resulting "leaked" telephone conversation between Victoria Nuland and the American ambassador to Ukraine, he considered the candidacy of Vitaliy Klitschko - due to the support of the affected person - undesirable for the United States (Document No. 140, p. 355).

The single judge considered the (first) request for the "arrest of one of his closest advisors and one of the most influential individuals in Ukraine" as a means of pressuring the Ukrainian

president in the negotiations around the Association Agreement, and saw the repeated request for detention as a US motive to prevent Dmytro Firtash from exerting further political influence. This review of political developments in Ukraine and the actions of the U.S. authorities in making the arrest requests provided the judge with the basis for the political motivation for the extradition request (Document No. 140, p. 361 ff.). At the same time, he found unconvincing the direct denial of political motivation by the US agencies (Document No. 140, p. 365 ff.).

This determination was appealed by the prosecutor's office (Document No. 162), which based the sufficient suspicion of a crime on, inter alia, additional documents that had been handed over by the American authorities at that time (in particular, a signed summary of the testimony of two prosecution witnesses, Document No. 152 and Document No. 151). Although the complainant saw in part 3 of Article 4 of the Extradition Treaty with the USA an obstacle to extradition alien to the Law on Extradition and Legal Assistance, which went beyond the scope provided for in Article 14 of the Law on Extradition and Legal Assistance (meeting the extradition safe harbor in part 3 of Art. 19) an obstacle to extradition, which, however, in its view, presupposes the existence of "an anticipated serious prejudice not consonant with the values of the rule of law, such as, in particular, a specific risk of political persecution or other grave violations of rights (human encroachment) amounting to violations of the rights of the person concerned."

The Higher Land Court in its decision in Case No. 22 Bs 291/15b of February 21, 2017 (Document No. 181) granted this complaint and found the extradition of Dmytro Firtash inadmissible.

In the light of the documents sent later, the court proceeded on the basis of a sufficient suspicion of a crime (p. 5 ff.) and denied the existence of political motives within the meaning of Article 4(3) of the Extradition Treaty with the United States (p. 15 ff.). In the court's view, this provision should, inter alia, be understood "as opposed to the pure literal text", subject to the limitations of the purpose of the law, in such a way that "the starting point for the test of political motives is still the (political) nature of the offense and not any political interests of the target state". Consequently, according to the court, "purely criminal acts do not fall within the scope of the regulation of Article 4(3) of the Agreement" (p. 16).

On the factual level, the appellate court proceeded on the basis that even if one were to accept the (contrary) interpretation of Article 4(3) of the Extradition Treaty with the United States by the trial court, there was insufficient evidence for a political motivation for the extradition request. Although the Vienna Higher Land Court recognized that the person concerned was a politically influential person and the circumstances of the first hastily filed,

then withdrawn and resubmitted arrest request seem unusual in the historical context. However, he countered these doubts by reflecting that political action should not be an obstacle to the extradition process (pp. 19 et seq. of the judgment).

Furthermore, it was taken into account that strict criteria are applied in verifying the extradition request. Consequently, according to the Court, no perverse interest of the target State should be presumed, since "the United States is a country with a long democratic tradition and rule of law" in which the person concerned had not committed " any political acts", "the acts charged were of a purely criminal nature", "the investigation and indictment occurred before the alleged, politically significant events" and "the indictment was brought against several persons from different countries" (p. 20).

Noting that the United States would also have sought the arrest of the alleged accomplice, the panel of judges stated that the factual situation would have been different if "the person should have been extradited to a country with a less pronounced rule of law, separation of powers and democracy", "where he or she would also be charged with political agitation and/or political offenses", i.e. "justice would have been caught in a conflict between an independent and independent judiciary decision and the strong influence of the executive branch" (p. 21). Taking into account the decision of a US federal judge on the travel ban orders signed by the US President, the Court of Appeal reasoned that it was the US judiciary that had "recently made an impressive showing" of its independence. Finally, the Court of Appeal proceeded on the basis that, given these views, "even under a literal interpretation of Article 4(3) of the Agreement, there is no sufficient indication of political motivation". For these reasons, the newspaper articles submitted were also not in a position to change the opinion of the panel of judges and, in their words, it was necessary "to refer also on this topic, in the tradition of continental Europe, to the reasoning of the requesting State", "according to which political motivation is reasonably denied" (p. 21 ff.). Since the wanted notice and the first request for arrest were made a short time after the indictment, the extradition proceedings that followed do not, in the Court's view, in principle raise any concerns (p. 22).

The Office of the Attorney General subsequently filed a cassation appeal against the Court of Appeal's ruling in the name of compliance with the law (Document No. 216a), and the person concerned filed a motion to reopen the proceedings. In the opinion of the Office of the Attorney General, the ruling of the Vienna Higher Land Court, adhering to the legal point of view presented in the justification, according to which "purely criminal acts" do not fall within the scope of Article 4(3) of the Extradition Treaty with the United States, does not meet the letter of the law. In its opinion, the court's statement of facts (apparently involved only in a subsidiary manner) that if the trial court's interpretation is correct, the political

motivation for the extradition request in this case is not sufficiently proven and there is no sufficient indication of political motivation, has a formal defect in view of apparently insufficient fourth case of Article 281(1)(5) of the CCP).

While the first-instance court detailed its considerations leading to the assumption of political motives of the requesting State, the appellate court's reasoning for rejecting them is limited, in the opinion of the Prosecutor General's Office, to speculation about the possibility of contrary conclusions. Furthermore, the appellate court sees no difference between the different criteria of verification with regard to the suspicion of a crime on the one hand and the conditions and obstacles to extradition on the other. With regard to the suspicion required for extradition proceedings is a presumption, if the documentation is convincing.

Doubt is an obstacle to extradition, the Prosecutor General's Office considers, should, however, be to the detriment of the requesting State rather than the affected person, and the criteria in this regard should therefore be higher than for the reasonableness of the suspicion of an offence.

By a decision of the Supreme Court of December 12, 2017 (Document No. 199), the implementation of the extradition was suspended pending a ruling on the motion to reopen the proceedings, and by a decision of June 25, 2019 (Document No. 226) - from which was derived, mainly outline of the proceedings to date - ruled that the legal opinion presented in support of the judgment of the Higher Land Court of Vienna as Court of Appeal in Case 22 Bs 291/15b (Document No. 181) of February 21, 2017, that "purely criminal acts do not fall within the scope of the regulation of Art. 4 para. 3 of Art. 4 of the Agreement", violates Art. 4 para. 3 of Article 4 of the Extradition Treaty between the Government of Austria and the Government of the United States of America (Federal Law Gazette III 1999/216).

Otherwise, the cassation appeal was dismissed and the motion to reopen the criminal proceedings was not granted.

In its reasoning, the Supreme Court cited the reasoning that the text of Part 3, Art. 4, para. Article 4(3) of the Extradition Treaty with the USA unambiguously implies that certain categories of criminal acts are not excluded from the test of political motives. The normative content underlying this provision of the treaty, that the person concerned, in addition to the barrier to extradition in part 3 of Article 19 of the Law "On Extradition and Legal Assistance" - that is, regardless of the type of criminal conduct incriminated - must in any case be protected from politically instrumentalized extradition proceedings, is, in the opinion of the Supreme Court, flawless from the point of view of a state governed by the rule of law and thus raises no objections. However, the Supreme Court answered the claimed lack of justification in the negative and found that the said violation of the law did not have negative

consequences for the affected person. The Higher Land Court of Vienna denied that there was a political motivation for the extradition request (in brief) due to the fact that

a./ The United States is a country with a long democratic tradition and rule of law;

b./ the person concerned has not engaged in any political activity in the requesting State;

c./ the incriminated acts are of a "purely criminal" nature (hence do not constitute political offenses);

d./ investigation and indictment took place prior to the alleged of political change in Ukraine;

e./ charges have been brought against several individuals from different countries;

f./ U.S. justice is politically independent;

g./ The US has soundly rejected the political motivation of the extradition request.

Because the Attorney General's Office opposes only the elements of justification cited under a./ and e./, f./ and g./, and completely omits the rest of the appellate court's justifications under b./, c./ and d./, it does not identify a violation of the law in the sense indicated.

Further, the Supreme Court cited the reasoning that the existence of the obstacle to extradition provided for in Article 4(3) of the Extradition Treaty with the United States could be ascertained only on the basis of evidence. Such conduct of the evidentiary process by means of circumstantial evidence involving objectifiable circumstances as (here) (and not challenged in the cassation appeal as such) is a tradition "democracy and legal statehood" of the U.S. and "independence of its justice", which could through a kind of "reflection effect" influence political decision-making, under the aspect of suitability of justification is not objectionable.

When the Higher Land Court of Vienna cited an illustrative example and the "continental European tradition" (judgment, p. 21) in assessing the reasoning of the requesting State on the question of the political motivation of the extradition request, it did not mention that in this case it considered itself limited (acting to verify the suspicion of a crime) by the formal principle of verification. Notwithstanding this, the Higher Land Court did not see this circumstance as obviously (arg.: "going beyond") a necessary condition for establishing the lack of political motivation for the present extradition request.

In his petition dated June 25, 2019, the affected person filed a motion to reopen the extradition proceedings as well as to suspend the implementation of the extradition (Document No. 223).

In terms of content, he justified his motion in several - subsequently set out with great abbreviations - thematic blocks and submitted at the outset 22 Annexes.

In his arguments as to whether there was sufficient suspicion of a crime, he first questioned the handwritten signed statements of both prosecution witnesses Sudhakar Reddy and Jugendra Singh Raghav dated 2012, with another statement of witness
Sudhakar Reddy dated August 15, 2017, in which he retracts his material previous testimony (Document No. 153). Further, he submitted affidavits from Ilya Ushanov dated June 24, 2019 and Paulina Li dated June 18, 2019, which are suitable to rebut Raghav's testimony (Document No. 152) regarding the meeting in Moscow he described. Both of these individuals, due to their position in the affected person's group of companies, should have been aware of such a meeting, which, however, turned out not to be the case, hence the impropriety of Raghav's testimony (Appendices ./1 through ./3).

New circumstances and means of proof have emerged, according to the complainant, and according to a document provided by the U.S. agencies in a letter dated August 22, 2014 "Annex A" (Document No. 68, p. 25). According to the U.S. agencies, the document at issue was a document compiled by Boeing in 2006 as part of an audit of the project and planned business dealings with Firtash and Bothli Trade AG, which referred to a plan to bribe Indian government officials. This document is the only additional evidence submitted by the U.S. agencies back during the trial in the trial court. From the documents now offered (Exhibits ./4 and ./5), however, it appears that it is merely an attachment to a presentation by an employee of the consulting firm McKinsey & Company, and that the incriminating language (indicia of bribe payments) is based only on the assumption of normal marketing strategies in India.

The next thematic cluster of arguments for reopening the proceedings covers the submission of various documents to prove that there was no criminal investigation in the State of the place of commission of the crime in India against the petitioner. Though this has been argued so far, however, it could not be proved. This is relevant, on the one hand, because this circumstance already also calls into question the suspicion of the commission of the crime, on the other hand, with regard to Section 17(1) of the Extradition and Legal Aid Act, which states that extradition is inadmissible if the person to be extradited has been acquitted in a criminal case by a court in the State of the place of commission of the crime, which has entered into force, or has been otherwise exempted from prosecution. This should also apply if, in the State where the offense was committed, subject to duty of service and knowledge of the charges and suspicion, the investigation has been abandoned before the investigation has begun (Annexes ./6 to ./10).

In the third cluster, the applicant for the motion to reopen cited new circumstances and evidence on the political motivations of the U.S. regarding the extradition request. From the simultaneously submitted documents of his U.S. attorney Dan C. Webb (Appendix ./11), it

appears that Andrew Weissman, who was brought onto Special Prosecutor Robert Mueller's (Special Prosecutor´s Office) team in June 2017, invited him by telephone on June 4, 2017, to a meeting on July 7, 2017, in Washington, DC. He went on to explain that the Special Prosecutor was seeking an offer of testimony on several topics from the petitioner of the motion to reopen. If he would be willing to testify on the topics he identified (political and/or legal prosecutorial material on the Ukrainian-Russian natural gas trade, against Russian President Putin or the Russian Federation, or on the promotion of U.S. interests in Ukraine) and the information would prove useful to the special prosecutor,

Weissman would discuss the pending case against the motion applicant in Chicago with Dan K. Webb. The special prosecutor has, he said, full jurisdiction to resolve the Firtash case in Chicago and neither the Department of Justice nor the federal prosecutor's office in Chicago would interfere with or impede Mueller's proposed or found solution. In this regard, the termination of the proceedings against him in the US was voiced as one of the solutions, no doubt. Plea-bargaining is, as the leading criminal law scholar John H. Langbein points out in his work, a means of coercion comparable to torture (Appendix ./12).

Further, the petitioner submitted e-mail correspondence between Constantine Kiliminik (per Kiliminik's Attachment) and Zev Furst from

December 11, 2013, and between Kiliminik and Alexander Kasanof dated December 6, 2015 (Annexes ./13 and ./14). According to the applicant, Furst is his counselor and it appears from the email correspondence that the person responsible for Ukraine at the time, the US Deputy Secretary of State Victoria Nuland, wanted to meet with the applicant of the motion. In connection with the already available US agency letter in the case file showing intensive meetings over the weekend of November 2 to 3, 2013 between officials of the Department of Justice (DoJ), the US Department of State and the CIA in Washington (Document No. 10a, p. 251) - without involving the prosecutor's office in Chicago - it is now proven that the US Department of State had a valid interest in Firtash precisely in the period between both extradition requests from October-November 2013 to February 2014.

In addition, other new documents confirm the initial and ongoing political and economic importance of the petitioner and the U.S. government's initial and ongoing desire to neutralize it. From a letter from U.S. Senator Roger F. Wicker, in his capacity as Chairman of the Commission on Security and Cooperation in Europe to Ukrainian President Poroshenko and Ukrainian Prime Minister Groisman dated August 3, 2018, it follows that Firtash is still seen as a central figure in the Ukrainian and European gas markets and it is desirable to urgently remove him from this market (Annex ./15).

The NZZ newspaper article of August 25, 2018 (Appendix ./16) also makes clear the continued sustained economic and political importance of the complainant of the complaint.

An Economist article entitled "America's legal overreach" makes it clear that the U.S. uses its justice system to discredit unwanted foreign companies in the interests of the U.S. economy and politics, citing the cases of Huawei/Meng Wanzhou and Alstom/Frederic Pierucci as examples (Appendix ./17).

A January 25, 2019 article in the Standard newspaper contains a statement by the Austrian federal president that the government of U.S. President Donald Trump treats the European Union and individual EU countries as colonies, citing the controversy surrounding the Iran nuclear deal and the gas pipeline project in this regard "Nord Stream 2" as examples (Appendix ./18).

A December 12, 2018 report by the US television channel Fox-News is also relevant in this regard, as President Trump, according to the report, said he would intervene in the Justice Department's case against a high-ranking executive of Huawei Technologies if it could be helpful in facilitating trade negotiations with China (Appendix ./19). U.S. Secretary of State Mike Pompeo there also clearly reaffirmed the prioritization of politics over law in the U.S. interest, making the following statement, "We have to put American interests on the scales at all times. Whenever it comes to a situation involving the application of law, we must ensure that foreign policy considerations are taken into account" (Annex ./20).

Appendices ./21 and ./22 deal with the appeal already described above in the name of compliance with the law.

By decision of the Vienna Criminal Land Court of July 15, 2019, the extradition was suspended pending the ruling on the motion to reopen proceedings and its entry into legal force (Document No. 227).

With legal effect on July 22, 2019, the Federal Minister for Constitution, Reform, Deregulation and Justice ordered the extradition of the affected person to the agencies of the United States to the extent of the ruling of the Higher Land Court of Vienna of February 21, 2017 (document no. 228).

The Vienna Public Prosecutor's Office rejected the motion to reopen the proceedings in a statement dated July 15, 2019 (Document No. 228a).

At first, the Prosecutor's Office, summarizing the arguments, referred to the fact that the verification of suspicion of committing a crime is conducted according to the principle of formal verification, even if according to Article 10(3)(c) of the Extradition Treaty with the USA it is necessary to submit documents from which there are sufficient grounds to believe that the person to be extradited has committed a criminal act.

After recounting selected details from the various statements and the considerations to be evaluated as evidence, the Vienna Public Prosecutor's Office concluded that it did not follow from the statement submitted by Reddy that his initial and summarized testimony was false. In the opinion of the Public Prosecutor's Office, the Higher Regional Court of Vienna based its reasoning on the suspicion of a crime, in addition, on a review of all documents, in particular the indictment, Raghav's statement, the money actually transferred according to the payment receipts, and the arrest warrant.

On the statements of Ushanov and Lee, the Prosecutor's Office clarified that they did not necessarily call into question Raghav's testimony. In addition, Raghav's interrogation referred to Pauline Kim, not Pauline Lee.

There is no indication on "Exhibit A" of the extent to which the fact that the paper in question was not drafted by Boeing but by McKinsey might have had any bearing on the suspicion of a crime existing against the affected person, since the document is not even separately mentioned in the Supreme Land Court's reasoning.

On the circumstance that there was no trial in India, the prosecutor's office cited the reasoning that this was known even earlier and had already been thematized in a decision of the Higher Land Court of Vienna.

The documents submitted on possible political motivation are, in the opinion of the prosecutor's office, not suitable to consider the matter in a different light.

In its statement of July 25, 2019 (Document No. 232), the Vienna Public Prosecutor's Office supplemented its earlier reasoning by stating that the circumstances and evidence cited were not new and, furthermore, it was not stated why these circumstances and evidence came into Firtash's possession only at this stage of the proceedings.

In a procedural document dated September 17, 2019, the applicant for legal remedy provided a response to the conclusions of the Vienna Public Prosecutor's Office and, in addition, submitted other - listed below with large reductions - voluminous arguments with a by submitting an additional 36 Annexes (Document No. 235).

The Higher Land Court of Vienna gave the two statements of Raghav and Reddy decisive weight with regard to the suspicion of a crime and considered practically only the content of both statements, and it obviously relied on both statements in their totality. Confirmations of payment alone, however, are not an indication of the payment of bribes, but merely indicate the fact that money was spent on the titanium project (Document No. 235, p. 14 et seq.).

From Article 10 of the Extradition Treaty with the USA, it must be concluded, in the opinion of the Prosecutor's Office, that there are higher verification criteria than in the principle of formal verification in force in continental European legal turnover (Document No. 235, p. 17).

Concurrently, the applicant for the motion to reopen submitted a further affidavit of witness Sudhakar Reddy dated August 24, 2019 (Reddy's third affidavit, Attachment ./11), further affidavits of witnesses Pauline Lee dated September 3, 2019 and Ilya Ushanov dated September 4, 2019 (Attachments ./13 and ./14), the affidavit of Robert Shetler-Jones dated September 5, 2019 (Attachment ./15), and the Memorandum of Understanding entered into between the Government of Andhra Pradesh and Bothli Trade AG on April 18, 2006 (Attachment ./12), the latter showing Bothli AG's commitment to provide between $15 million and $20 million for voluminous (preliminary) work. Reddy confirms, in the applicant's view, only a selection of legal documents, and it appears from the additional testimony of Kim and Ushanov, as well as from the statements of Shetler-Jones, that Pauline Kim must really mean Pauline Lee. In subsequent arguments, the petitioner elaborated on the prosecutor's reflections on the prosecutor's office's assessment of the evidence in its opinion.

In the applicant's view, new circumstances and evidence had now been adduced on the question of political motivation, and it was important that the new evidence, in conjunction with the evidence adduced so far, seemed suitable for considering the political motives for the extradition request now sufficiently circumstantially proven. The Supreme Court did not confirm the reasoning of the Vienna Higher Land Court as impeccable, and its dismissal of the appeal in the name of legal compliance was for formal reasons, as the Office of the Attorney General had not examined all elements of the reasoning without exception. The new evidence does not, according to the applicant's argument, relate only to one or the other of the obstacles to extradition, but interacts with other obstacles for extradition.

On this thematic block, the petitioner also submitted (partly new, partly supplementary) statements and testimonies, in particular, from Valentyn Nalyvaichenko dated September 2, 2019 (Annex ./1), Andriy Kliuyev dated September 5, 2019 (Annex ./2), an interview of former OMV Group Chairman Seele in the Standard newspaper dated August 6, 2019 on the political component of oil and gas deals (Annex ./3), depositions of Viktor Shokin dated September 4, 2019 (Attachment ./4) and Vladimir Sivkovich dated August 28, 2019 (Attachment ./5), a tweet by former U.S. Vice President Biden's foreign policy advisor dated June 25, 2019 (Attachment ./6), a letter from U.S. Senator Wicker and a press release (NBC News) by former U.S. Justice Secretary Jeff Sessions (Attachments ./7 and ./8), and two other newspaper articles dated July 2019 (International and The Hill, Attachments ./9 and ./10).

Valentyn Nalyvaychenko, an active Ukrainian politician, was, according to the applicant's arguments, between December 22, 2006 and March 11, 2010, as well as during the particularly significant period between February 24, 2014 and June 18, 2015, the head of Ukraine's internal intelligence service (SBU) and confirms that, the SBU believes that the

outcome of the meeting between U.S. Deputy Secretary of State Nuland and Ukrainian President Yanukovych on November 4, 2013 was the reason for the withdrawal of the U.S. request for Firtash's detention, which he has already confirmed in his capacity as acting head of the SBU in his letter of March 20, 2015. He now furthermore confirms that as early as February 26 and 27, 2014 (i.e., on the day of Yatsenyuk's appointment as Prime Minister), Turchynov (since February 24, 2014 Acting President of Ukraine) and Yatsenyuk (since February 27, 2014 Prime Minister of Ukraine), demanded that he personally, as the newly appointed head of the SBU, take immediate action to remove or limit the influence of the affected person. In addition, Turchynov demanded that he fabricate a case against the affected person personally, as well as against the INTER media company, and was instructed to take all necessary measures to bar Firtash himself from entering Ukraine, as well as measures to control Firtash and limit his influence in Ukraine (and he, despite being a political opponent of Firtash, refused to follow this illegal instruction). Yatsenyuk and Turchynov were in direct and constant contact with the Americans at the time (in the second half of February 2014). At the same time, namely on the same day, February 27, 2014, the US again sent a request to Austria for the arrest of the affected person. Even the Higher Land Court of Vienna, according to the applicant, described the circumstances of the hastily sent, then withdrawn and re-submitted request for detention as "unusual" (Document No. 181, pp. 90). The new evidence is now, in the applicant's view, corroboration for the political background, in particular also around the time of the second arrest request, and joins the already assessed evidence.

Ukrainian politician Andriy Kliuyev was the Chairman of the National Security and Defense Council of Ukraine from February 2021 to January 2014 and the Head of the Presidential Administration of Ukraine from January 24, 2014 to February 23, 2014. He played a leading role in the negotiations on the EU-Ukraine Association Agreement, was personally involved in particular in the events between October 2013 and February 2014, as a result of which he has direct and personal observations regarding political developments in Ukraine and U.S. interference and influence on Ukrainian politics. In 2003-2004 and between August 2006 and December 2007, he was Deputy Prime Minister for the Fuel and Energy Complex. His testimony shows that the person affected had come to the attention of some U.S. politicians as early as late 2005 who wanted to reduce any Russian influence and then diversify the gas market. The person affected was an active and public supporter of the trilateral agreement involving Russia and had decisive influence over the Ukrainian government and President Yanukovych. It confirms the November 4 meeting between Yanukovych and Nuland, which put strong pressure on him to sign the Association Agreement, and views the request for the

arrest and extradition of the affected person as a threat to Yanukovych and his entourage and a direct warning to senior politicians and businessmen who fought against an abrupt and radical end to Ukrainian-Russian relations and sought to postpone the signing of the Association Agreement with the EU without trilateral negotiations between the EU, Russia, and the Russian Federation.

Klyuyev describes that Yanukovych, shortly before the crucial EU-Ukraine summit in Vilnius on November 27, 2013, decided to postpone the signing of the Association Agreement until February 2014, as well as another meeting between Yanukovych and Nuland on December 11, 2013, during which Nuland again threatened sanctions against individuals in Yanukovych's entourage, including his confidant Firtash. Klyuyev explains that the USA actively tried to bring to power the Ukrainian politicians Turchynov and Yatsenyuk, who it wanted to realize the interests of the USA policy, to the point of threatening to physically eliminate dissidents to ensure the transition of power to Yatsenyuk, Turchynov and others.

These new circumstances and evidence, in the applicant's view, confirm that the affected person came to the attention of U.S. policy in late 2005 at the latest, and explain why the U. S., as early as 2006, began to investigation into the affected person. The fact that U.S. agencies in particular in 2006 were highly interested in and rejected his RosUkr-Energo ("RUE") company is also documented by the already available testimony of Wolfgang Puchek's witnesses and is now further corroborated.

Witness Viktor Shokin, who served as Deputy Prosecutor General on multiple occasions and was the Prosecutor General of Ukraine from February 10, 2015 to April 3, 2016, describes in his September 4, 2019 testimony also his observations, as Prosecutor General, regarding the influence of high-level U.S. policy makers on Ukrainian politics and justice. According to his testimony, former U.S. Vice President Joe Biden, along with former Ukrainian President Poroshenko and Ukrainian Interior Minister Avakov, took steps to prevent Firtash from returning to Ukraine. As Interior Minister, Avakov publicly announced that Ukraine's criminal prosecution authorities were pursuing three criminal cases against the affected person and the affected person would be arrested if returned. Shokin confirms that in reality no evidence or materials that would confirm Firtash's complicity in the criminal acts were presented to him, as Prosecutor General, by anyone. When it became clear that there was no basis for the arrest, U.S. officials and the Ministry of Internal Affairs of Ukraine changed their statements to U.S. charges and the affected individual was to be arrested upon his arrival in the country based on a request from the U.S. Department of Justice. However, there was no U.S. evidence that could have justified a U.S. investigation under the principle of universal jurisdiction. Shokin explicitly calls the case a case of U.S. officials interfering in

Ukraine's affairs to achieve U.S. goals. Fitash's plans to return to Ukraine's political scene on December 2, 2015 were thwarted by all means by former US Vice President Biden, Poroshenko and Avakov and even Ukrainian airspace was closed to private planes in late November. Shokin's testimony also reveals that he refused to drop a criminal investigation against Burisma Holding, a gas company on whose board Joe Biden's son Hunter Biden sat. When he failed to honor that wish, he was removed from office at Biden's instigation.

Shokin's testimony, according to the applicant, would refute that the person affected had already lost his political weight in 2015-2016. Contrary to the facts established by the Higher Land Court of Vienna, the witness describes how strongly the President of Ukraine and the Government of Ukraine at that time, and in particular Rep. U.S. governments feared the political weight of the affected individual in Ukraine.

In the trial conducted so far, the affected person could only support his arguments about US political motivation with various press releases and Prof. Sakwa's opinion, but now there is also witness testimony based on direct observation as corroboration.

It emerges from the August 28, 2019 testimony of Volodymyr Sivkovych, a Ukrainian politician who served as Deputy Secretary of the National Security and Defense Council of Ukraine (NSDC) between 2010 and February 2014 and a political opponent of the affected person, that until November 4, 2013, work was conducted on the assumption that the Association Agreement would not be signed. He confirms that the person concerned - inter alia, as chairman of the Federation of Employers of Ukraine (FEU) - played an important role as a political mediator between Ukraine and Russia and had a significant influence in numerous meetings with Prime Minister Azarov on the Ukrainian government's decisionmaking on the said agreement. According to his observations, on November 4, 2013 - after a meeting with Victoria Nuland - Yanukovych suddenly changed course on the Association Agreement completely, which took the Ukrainian government by surprise.

After the next meeting between Nuland and Yanukovych on December 11, 2013, the latter confided in Sivkovych and told him about the meeting. According to him, Nuland had with her a folder with documents containing information regarding bank accounts and property values outside Ukraine of Yanukovych, his son and his closest associates, including Firtash. She began threatening immediate sanctions against all of these individuals and said that all of these foreign assets would be frozen. On December 14, 2013, she had another conversation with Yanukovych, during which the latter was intimidated and told him everything that Biden and Nuland had told him.

Sivkovych describes in detail the seizure of power by the opposition (Turchynov and Yatsenyuk). He knows that Biden, Nuland, Turchynov and Yatsenyuk devised various

alternative plans with the sole purpose of effecting a change of political power to a proAmerican opposition. They targeted Turchynov and Yatsenyuk to isolate pro-Russian forces such as Firtash and keep control of his influential television channel INTER. Sivkovych also confirms Shokin's testimony regarding his dismissal following an investigation against Burisma Holding.

Finally, according to petitioner's argument, medial events that occurred after the Supreme Court's decision also substantiate obstacles to the extradition in accordance with part 3 of Article 4 of the Extradition Treaty with the USA and part 3 of Article 19 of the Law "On Extradition and Legal Assistance".

A tweet by former U.S. President Biden's foreign policy advisor dated June 25, 2019, also, according to the petitioner's argument, confirms the political motivation of the extradition request. Back on the same day that the Supreme Court orally announced its decision, Michael Carpenter posted the following tweet: "If anyone knows the inner workings of Putin's kleptocratic system, it's Firtash. For this reason, one of the Kremlinlinked oligarchs has paid a $172 million dollar bail." Michael Carpenter is a foreign policy advisor to Joe Biden (and former US Vice President who was responsible for US policy on Ukraine). He held this position back when Joe Biden was Vice President Barack Obama, and thus was active in foreign policy for the US government back when the complainant was arrested, meaning he plays a significant role in US foreign policy. His tweet makes no mention of the Indian criminal trial or criminal charges, but only thematizes Firtash's perceived closeness to Putin and Russia, which allows for direct conclusions about the political motivation of the United States.

In this regard,a letter from U.S. Senator Wicker and a press release from former U.S. Justice Secretary Jeff Sessions are also relevant. On April 11, 2018, U.S. Senator Roger F. Wicker inquired in a letter to Justice Secretary Jeff Sessions about the status of the extradition case. In addition to numerous, unsubstantiated allegations and biased judgments, the affected individual is referred to in the letter as a "direct agent of the Kremlin." Through his spokesman, the Justice Minister conveyed that he stands firmly behind the people in Ukraine who are fighting for freedom and reform. This letter, the petitioner argues, was a request by Senator Wicker to the U.S. government for information about efforts to extradite the petitioner, who "continues to be known for his corruption and his ties to the Kremlin and organized crime." And not a word is said here about the bribery allegations under investigation, but only about Firtash's alleged geopolitical proximity to Russia.

In Appendix ./10, the petitioner submitted an article by whistleblower journalist John Solomon in The Hill newspaper dated July 22, 2019, who reported on Firtash's extradition.

The conversation between Dan K. Webb and Andrew Weissman caused a huge outcry in the U.S. media.

Also, a spokesman for U.S. President Trump's interests, Rudy Giuliani, demanded that the Justice Department, according to a July 23 article in the International newspaper 2019, investigate Weissman's actions (Attachment ./9).

In connection with the already submitted transcript of the conversation of the American attorney Dan C. Webb dated July 7, 2017, it follows that Weissmann's actions were not at all as ordinary as the Vienna prosecutor's office tried to portray them.

On the next, for the first time presented in the case in this procedural document, thematic block, under which the applicant of the motion seeks to show non-compliant with the ECHR prison conditions in the light of Arts. 3, 4 and 6 ECHR, Art. 42 ff. of the EU Charter of Fundamental Rights under Art. 19(1) and (2) of the Extradition and Legal Aid Act, he submitted a statement from the witness Frederic Pierucci (Annex ./16), as well as excerpts from various papers, reports, commissions, hearings and media articles on the Pierucci case and similar cases (Annexes ./17 to ./36).

Pierucci points not only to the geopolitical actions of the United States also through the Alstom case, but also shows more clearly the prevailing prison conditions in the United States. Pierucci is a defendant in an economic crime case important to US interests, who was transferred without conviction to a maximum security prison where he was forced to spend many years in degrading conditions. In doing so, he cites 9-square-meter cells for four persons, constant lighting, humiliating personal examinations, lack of a private sphere while using the toilet, irregular access to potable water, inadequate medical care, as well as inadequate opportunity to visit his family and no actual opportunity to exercise the right to a fair trial. Such prison conditions are in contravention of Article 3 of the ECHR as they cause significant physical and mental suffering which diminishes human dignity and gives rise to feelings of insult and humiliation.

Appendix ./17 included an excerpt from the Center for Public Prosecutor Ethics white paper, "The Epidemic of Public Prosecutor Misconduct."

Pierucci's situation, according to the applicant's arguments, is comparable to that of the affected person, and therefore there are reasonable and specific reasons why the applicant would be treated as described above. In view of the consistent pattern of reliably verified, extensive and systematic human rights violations in the United States, specific grounds and compelling reasons are already unnecessary, for which articles from Human Rights Watch and Al Jazeera have also been submitted (compilation of Appendices ./18). In such a case, safeguards would also be irrelevant, even though they are currently irrelevant.

exist. Pierucci describes further violations of human rights and fundamental freedoms that are not addressed by Article 3 of the ECHR.

Article 4 of the ECHR states that no one shall be subjected to slavery or forced labor, and work that is normally required of a person held under the conditions set out in Article 5 of the ECHR in prison shall not be considered forced labor. 5 ECHR conditions in prison shall not be considered forced labor. The exceptional provision of the Thirteenth Amendment to the Constitution has enabled the US to turn prisons into a multi-million dollar business. Commentators are unanimous that the system is a new form of slavery.

Pierucci's application also highlights the denial of the right to a fair trial under Article 6 of the ECHR and Article 42 of the EU Charter. According to ECtHR and Supreme Court jurisprudence, an ejectment decision raises an issue under Article 6 of the ECHR where there has been or is threatened to be a manifest denial of a fair trial in the requesting state ("flagrant denial of justice" or "flagrant denial of process").

According to the conclusions of the Vienna prosecutor's office, with regard to the meaning of the submitted excerpts from newspaper articles about other cases, the reasoning is that the existence of a politically motivated extradition request must be ascertained on the basis of circumstantial evidence and the objectified circumstances may influence the US policy decision ("reflection effect" according to the Supreme Court decision, p. 17 ff.).

That a reference to a politically motivated extradition request is not per se excluded follows, according to the applicant's argument, from the express inclusion of the provision of Article 4 § 3 in the Austrian-US bilateral extradition treaty. The fundamental assumption that the United States is a State with a long tradition of democracy and rule of law and an independent judiciary does not exclude that an extradition request would nevertheless be used for political purposes.

In subsequent arguments in the newly detailed Alstom case, the petitioner attached an excerpt from the report of a parliamentary commission of inquiry in the French Parliament dated April 19, 2018 (Annex ./20), an excerpt from a meeting of that commission of inquiry dated December 7, 2017 (Annex ./21), the position of French MP Pierre Lellouche (Annex ./22), as well as the minutes of the hearing of former Economy Minister Arnaud Montebourg before the French Senate (Annex ./23), and referred to the fact that these opinions involved a country that is traditionally inclined to cooperate with the United States and the opinions were given by persons who could objectively assess the circumstances of the case. Since they were not directly involved in the Alstom case, they are not given much weight.

A similar US scheme, according to the complainant, was applied in the Embraer case (collection of Annexes ./24). Here too, one can see notable parallels with developments in

US economic interests and criminal cases in the US. The Huawei/Meng Wanzhou case was another example that has recently attracted public attention (Appendices ./25 to ./28), as well as the case of the Asian technology concern ZTE (Appendices ./29 to ./35).

In Exhibit ./36, the petitioner finally submitted an article from the June 3, 2019 FAZ newspaper about the role of the consulting firm McKinsey & Company in relation to the opioid crisis in the United States.

In view of the fact that requesting authorities in extradition proceedings do not have the procedural status of a party and do not have the right to familiarize themselves with the case file (cf. Decision No. 313 HR 62/13k-141 of the Vienna Land Criminal Court of October 5, 2015), the Federal Ministry for Constitution, Reform, Deregulation and Justice informed the requesting agencies in a letter of July 18, 2019, on its own initiative, of the substantive arguments of the affected person in the reopening proceedings and gave them, thereby the opportunity to give their feedback, which they submitted together with seven Annexes (Documents No. 236, No. 237 and No. 238) and which was transmitted with the feedback of the Vienna Public Prosecutor's Office dated January 27, 2020 (Document No. 240) to the trial court.

The Criminal Law Division in the U.S. Department of Justice indicated that the arguments made could not justify reopening the case and the review of the facts should be left to a court in the United States.

The Deputy U.S. Attorney in Charge emphasized, in an extensive, heavily abbreviated review by the U.S. Attorney for the Northern District of Illinois, primarily the U.S. interest in Firtash, which began in 2008 at the latest, because of his alleged connection to Semyon Mogilevich, who oversaw a criminal organization operating in 30 countries, and disputed the political motivation for the extradition request. In addition, he submitted another statement by Special Investigator Melissa Novak.

According to the response, as early as 2014, Firtash's representatives approached U.S. Department of Justice officials with an offer to negotiate (Annex ./A). Dan Webb, the US representative of the affected person's interests, also approached US prosecutors back in 2014 and offered to provide information on political cases, but was denied in writing (Annex ./C).

Regarding the contact between Webb and Special Prosecutor Weissman, there is a statement from Special Prosecutor Omer Meissel, who was present at the meeting and denies that Weissman assured Webb of full authority (Appendix ./D). In addition, it should be pointed out that there was no contact between Nuland and the prosecuting authorities.

Appendix ./B included a newspaper article about the detention of a German police officer who, according to the recall, is related to Firtash.

In respect of suspected offense, Annexure ./E confirmed the presence of counsel during the interrogation of Reddy, Annexure ./F transmitted the videotape of Reddy's interrogation and Annexure ./G transmitted the tape recording of the overheard conversation of coaccused Gajendra Lal.

The Power-Point presentation slide "Attachment A" is only one of several documents submitted, in addition to the special prosecutor's supplemental affidavit and other documents such as emails and transcripts of recorded conversations, and the Superior Land Court did not expressly rely on those documents.

The question of possible action on the investigation in India is irrelevant, according to the recall.

In document No. 240, the Vienna Public Prosecutor's Office sent its response to the additional arguments of the person concerned. Sufficient suspicion of a crime still exists. According to the response, it is unclear how the submitted witness statements from 2017 and 2019 were made, and it follows from the response of the US authorities that, on the contrary, the statement from 2017 should be questioned. There is no compulsion from the transmitted audio-video recording of Reddy's statement culminating in the signing of the 2012 statement. And if the 2017 statement gives the impression that Reddy never spoke to Dr. KVP about the monies owed, that statement is confusing and contrary to other findings in the evidentiary process. Even earlier, the U.S. agencies had produced documents referring to Reddy's outstanding money transfers to Dr. KVP, and the transfers (in the original: Transfers) could also refer to bribe payments identified in other emails. The secretly recorded conversation between Reddy and Lal on September 17, 2010 at the Le Meridien Hotel in Vienna also confirms that Reddy was aware of the payments made to Dr. KVP. All of this ties in logically with the 2012 statement. Even assuming that this statement no longer seems suitable to raise a strong suspicion of a crime, there is still the statement of another prosecution witness, Raghav, and it is consistent with the other results the evidentiary process of U.S. agencies. Both the emails and the recorded telephone conversations are suggestive of bribery activities. For example, Special Prosecutor Jennifer Shipman's March 24, 2014 statement refers to emails that the co-conspirators sent to each other that explicitly discussed the need to bribe Indian members of the government. In addition, there is a wiretapped telephone conversation in which both employees of the petitioner-appellant speak of his agreement to pay Dr. KVP an additional three million dollars.

On the topic of the alleged political motivation of the extradition request, the Prosecutor's Office argued that the Supreme Court decision could also not have a favorable effect on the petitioner and therefore implicitly denied the existence of political motivation. Furthermore, the reasons why the circumstances and evidence now cited were only available at this stage of the proceedings were again not set out, and the circumstances and purported evidence are not suitable to explain the political motivation for the extradition request. They relate almost exclusively to proceedings at a later point in time, when the U.S. agencies had already set out the circumstances that the applicant was on the radar of the U.S. justice authorities as early as, at the latest, 2008, because of his links to Semyon Mogilevich. All the submitted affidavits reflect the impression of Ukrainian politicians as well as the former Ukrainian prosecutor, but these processes have already been discussed and analyzed in detail during the extradition case, so there is nothing fundamentally new here. In terms of content, these are only personal assessments. The fact that the applicant of the petition came to the attention of the American investigative authorities back in 2006, because at that time he played a key role in the energy and gas markets of Ukraine, is only an assumption. It also follows from the documents submitted by the US agencies that it is the petitioner's lawyers who are trying to include political or geopolitical issues in the negotiations on cooperation, while the US prosecutors, who have brought charges in this case and are continuing the criminal prosecution, are resisting such efforts.

There was no communication between the prosecution team of the U.S. Attorney in Chicago for the Northern Judicial District in Illinois and Victoria Nuland regarding this case and it played no role in the decision to initiate criminal prosecution of the petitioner.

The arguments that in the USA prison conditions do not comply with the ECHR and the applicant would not have received a fair trial there,
are not new. The United States is one of the oldest and most stable democratic systems worldwide and reference is made to the reasoning of the Prosecutor's Office already cited, as well as to the decision of the Higher Land Court of Vienna of February 21, 2017.

In procedural documents dated September 15, 2020 (Documents No. 248, No. 249 and No. 250), the affected person again submitted a voluminous response and in subsequent procedural documents dated May 27, 2021 (Document No. 254) and August 5, 2021 (Document No. 257) also additional arguments.

According to the applicant's arguments, the Vienna Public Prosecutor's Office, in its arguments - which are here again cited in great abbreviations - in document No. 248 together with seven additional annexes, overlooks the fact that the circumstances and evidence presented are to be assessed in conjunction with the arguments already given. The U.S.

accusation that Firtash has a relationship with Mogilevich is false and was already denied by Austrian authorities as early as 2007. From the explanations of the head of the department at the time, Mag. Erich Zwettler to the committee of inquiry in October 2006, it appears that the accusation that he is a member of the Russian mafia and has links to Mogilevich is only a rumor (Appendices ./1 to ./3).

The U.S. political and strategic objectives and its measures to intervene in Ukraine can be confirmed by numerous official and unofficial documents. These include, for example, the president's published The National Security Strategies, U.S. laws and other legal acts that relate to Ukraine and U.S. financial support for Ukraine with the intention of influencing the political and party landscape in Ukraine. The U.S. goal is also to reduce Russian influence through U.S. exports of liquefied natural gas and to increase Ukraine's importance in military-strategic and security policy terms. The position of the petitioner is diametrically opposed to these interests and the US is interested in displacing and eliminating him and his economic and political influence. This is especially true of his influence in the field of titanium, which has long attracted U.S. interest. Because of this, it has come to the point of developing a coherent U.S. strategy towards the petitioner.

Wikileaks reveals, for example, a May 2009 letter from the American Embassy in Hungary to Washington, D.C., identifying Firtash as a co-owner of RosUkr-Energo ("RUE") with criminal connections. Given the interest and direct involvement of individuals and institutions with no apparent connection to the investigation of the incriminating India case, a political component becomes apparent Firtash's prosecution by law enforcement.

William B. Taylor had already served as the United States Representative to Ukraine on two occasions, first as Ambassador from 2006 to 2009. He hosted the petitioner on 8 December 2008 and 3 March 2009 and in his communications to Washington often referred to him as a dubious figure with links to organized crime. On February 11, 2010, Ambassador Tefft, who succeeded Taylor in Ukraine, wrote, among other things, that Firtash had regained the upper hand and reported him as the suspicious head of the gas brokerage RUE. More recently, Firtash has been referred to as a "Russian political operations agent for Russia disguised as a gas trader," specifically by expert Anders Åslund in a July 20, 2017 briefing from the Commission on Security and Cooperation in Europe (U.S. Helsinki Commission), which is a U.S. government organization.

Another more recent indication of political motivation is a scholarly analysis published by Sagat Saha and Ilya Zaslavsky for the Council on Foreign Relations, "Advancing Natural Gas Reform in Ukraine," which suggests, among other things, that a prosperous and energy

secure Ukraine that can fight back against Russian interventionism would advance U.S. foreign policy goals in the region.

The following is a link to a November 10, 2008 report by the U.S. information service Stratfor, which, among other things, says: "But Moscow also controls many other notable oligarchs, such as Viktor Pinchuk, Igor Kolomoisky, Sergei Taruta and Dmitry Firtash."

Finally, the role of Assistant Secretary of State Victoria Nuland is reiterated, with a leaked February 2014 telephone conversation between her and then Ambassador to Kyiv Geoffrey Pyatt (Appendix . 7) showing the extent of U.S. influence on further political developments in Ukraine. In addition, her inaugural speech to the Atlantic Council on energy security is presented (Appendix ./6), as is a July 11, 2007 U.S. House of Representatives resolution on similar topics (Appendix ./6).

Thus, to summarize the arguments, the applicant of the motion, according to him, came to the attention of the US justice authorities not only in 2008 because of his connection with Semyon Mogilevich, but even several years before that stood in the way of US economic and geopolitical interests. More recent comments by senior US actors, civilian information services and even statutory targets (Annex 4) prove, according to the p e t i t i o n e r , the continuing political interest in its "disarmament".

In procedural documents No. 249 and No. 250 together with the subsequent 21 Appendices, the applicant further argued that, in particular, in the six witness statements submitted on the alleged political motivation, contrary to the reasoning of the Vienna prosecutor's office, direct observation of decisive periods of time was reported. This is not a matter of inference, but of facts, and of particular relevance here is the statement of the witness Ihor Kolomoisky, in a conversation with whom Victoria Nuland unequivocally confirmed the political motivation of the extradition request.

At the very least, the principle of substantive legal scrutiny applies - according to the Attorney General's Office - to the assessment of whether there are obstacles to extradition.

The prosecutor's argument regarding sufficient suspicion of a crime is rendered insubstantial and is now presented with Witness Reddy's fourth statement dated March 13, 2020 (Attachment ./1).

Not only Reddy's testimony was given under great pressure, but also that of Gajendra Lal, which the latter has expressly confirmed in his statement dated March 17, 2020 (Annexure ./2).

Appendices ./3 and ./4 provided additional statements from witnesses Serhiy Zavorotnyy and Ihor Kolomoisky, which again contain an element of novelty with respect to incidents and political events in Ukraine, in particular between October 30, 2013 and November 4, 2013.

Igor Kolomoisky, a successful, politically active businessman and, after Yanukovych's flight, governor of the Dnipropetrovsk region, has, by reason of his position and the conversations he has had with Ukrainian and American politicians in this connection, direct observations of events in Ukraine at relevant times. He specifically describes, in particular, his conversation with Victoria Nuland in June 2014, who explicitly confirmed to him that the actions against the applicant had political reasons.

Serhiy Zavorotnyy is a former advisor to Ukrainian Prime Minister Mykola Azarov and Serhiy Arbuzov between March 11, 2010 and January 28, 2014. His testimony shows that the applicant was an important player in the Ukrainian economy and politics and played a key role during Yanukovych's delay in signing the association agreement with the EU. According to his explanations, primarily in the period 2010-2012 there was a perception that Firtash was a financial advisor to the Yanukovych family and the risk of Firtash's arrest at that time was almost tantamount to the risk that details would be revealed from him of Yanukovych's financial affairs. The impending arrest of Firtash was thus a tremendous means of pressuring Yanukovych. Yanukovych was notified during his meeting with Nuland of the arrest request. After Yanukovych signed the agreement and the arrest request was withdrawn by U.S. agencies, the request was sent again when Ukraine was at a political crossroads.

Another statement by witness Dan C. Webb, dated March 16, 2020, which corrected incorrect statements by the U.S. government to the Vienna prosecutor's office. He requested that the U.S. agencies provide information in 2017 on behalf of the petitioner of the motion, not on his own initiative, but rather on the contrary. Attachment ./A submitted by the U.S. agencies is a declaration of authorization by the motion applicant Robert ShetlerJones to, among other things, negotiate with the U.S. agencies for an outstanding arrest warrant as well as an extradition request. The persons named by Special Prosecutor Novak in the application are listed as accompanying Shetler-Jones. The power of attorney in no way serves to prove a dialog about (geo)political issues, but confirms the arrest warrant and the extradition request from 2014. The US agencies completely omitted the fact of the meeting on July 7, 2017 in their feedback and therefore the meeting was not challenged by the US agencies.

The Prosecutor's Office on the topic of political motivation relied primarily on the Deputy U.S. Attorney's October 2, 2019 statement (Document No. 237), but the Petitioner's voluminous arguments were not rebutted simply by the standard language denying them.

In particular, with regard to witness Shokin, in the meantime, numerous attempts were made to discredit him, but they were unsuccessful. It should be taken into account that

witnesses Nalyvaychenko and Sivkovych are Firtash's political rivals, which particularly lends credibility to their explanations.

Contrary to the reasoning of the prosecutor's office, the witnesses, according to the applicant of the motion, not only share their impressions of the obstruction of the applicant's return to Ukraine in early December 2015, moreover, it concerns only Shokin's statement. However, the obstruction of entry on December 2, 2015, conducted by U.S. agencies, is not insignificant; it is the result of a continuous and ongoing U.S. geopolitical interest in depriving the petitioner of participation in shaping political opinion in Ukraine. Shokin's descriptions also allowed to infer the motives of the US actions against the petitioner and at the time of the extradition request and are another piece of evidence.

Attached as Exhibit ./7 was a confirmation from the Office of the Prosecutor General of Ukraine dated August 3, 2020, that Ukraine had not received a U.S. request to detain or take over the criminal proceedings against Firtash from November 2015 until that time.

For the alleged unlawful U.S. agency actions, the applicant submitted a July 21, 2020 witness statement from James Kallstrom, which shows the unusual nature of such actions (Attachment ./8). Kallstrom held a senior position in the CIA's Foreign Intelligence Service between 1994 and 1997 and then, as the lead officer to the Governor, was responsible for combating terrorism and coordinating and enhancing counterterrorism efforts in the federal State of New York. He was well versed in U.S. agency procedures and objectives with respect to extraditions and was recognized as an intimate knowledge of U.S. law enforcement.

The arguments that follow contain an analytical article by retired Ambassador Dr. Wendelin Ettmeyer. It outlines the principle and essence of justice imperialism, the belief that America is the chosen nation to lead and rule the world, and the use of "law" as a weapon against other states, concerns and projects, as well as against other individuals. American justice agencies do not operate overseas in isolation, as their actions are supported by the foreign policy apparatus, the U.S. Department of State (State Department), and other departments. "The fight against corruption" serves to eliminate international competition and "the fight against terrorism" to engage in espionage around the world. In view of this, it is necessary that consciousness begins to form and Europe protects its own interests.

In March 2020, the International Criminal Court determined that it could investigate alleged war crimes by U.S. troops and CIA personnel in Afghanistan. In response, US President Donald Trump issued an executive order that imposed powerful US sanctions on high-level officials of the International Criminal Court, in particular measures against the chief prosecutor and the head of international cooperation, with the chief prosecutor having her US visa revoked, both individuals banned from entering the US, and their assets and accounts,

as well as those of their loved ones, blocked and their assets and accounts frozen (Appendices ./5 through ./16).

Another example that goes beyond the personal threat to the U.S. as a state and the threat of economic destruction is the assassination of Iranian General Qasem Soleimani3 on January 2020 by U.S. drones, which is a a clear violation of international law, the rationale for which was not accepted by any European state. Even the New York Times called the American actions immoral and contrary to international law.

Further, the applicant cited arguments on the Nord Stream-2 project, Huawei, TikTok and the US blocking of the WTO Arbitral Tribunal. These examples are relevant because they prove the use of the US justice apparatus for political reasons and for political purposes.

The description of politically motivated U.S. actions in similar cases serves not only to expose violations of the principle of fair trial as understood by Article 6 of the ECHR, but also to refute the generally accepted establishment of the legality of U.S. actions in view of its supposed tradition of democracy and rule of law.

In the Huawei/Meng Wanzhou, Julian Assange, Michael Flynn, and Roger Stone cases, additional annex collections were submitted (Attachment ./9 to ./13). Many of these, according to the complainant, demonstrate a conflation of politics and criminal justice, for which a compendium of appendices on the independence of the U.S. Department of Justice was also attached (Appendix ./14). In addition, the events following the assassination of George Floyd also raise doubts about the legal statehood of the United States (Appendix ./15 compilation).

All of these events constitute circumstances and evidence that have reopened since the judgment of the Higher Land Court and are suitable to rebut the assumption of the Higher Land Court of Vienna that the U.S. agencies acted on the basis of the rule of law and therefore raise significant doubts as to the correctness of the judgment of the Higher Land Court of Vienna.

The ECtHR stated in its May 19, 2004 ruling in Gusinsky v. Russia that criminal cases cannot be used as part of a negotiation strategy for economic purposes.

With regard to the obstacle to extradition under Article 19(1) of the Extradition and Legal Assistance Act, it was argued that the reference to the tradition of democracy and legal statehood of the USA could at best be a rebuttable presumption. According to the Vienna prosecutor's office, it would never come to the point of violating fundamental human rights and freedoms in the USA, but this is as wrong in the case of the USA as it is in the case of other countries such as Austria or Germany. All of these countries have already been repeatedly condemned by national and international courts, such as the ECtHR, for human rights violations. In a recent ruling, the European Court has expressed the position that It is

not enough to rely on a country's reputation or on its fundamentally guaranteed respect for fundamental human rights and freedoms. The ECtHR has frequently issued decisions finding human rights violations in the US. Numerous documents and reports from authoritative institutions also reveal U.S. actions contrary to fundamental human rights and freedoms. The actual systematic denial of legal protection, i.e. violation of Article 6 of the ECHR, has already been detailed and, moreover, it would be detached from reality to believe that the petitioner, who is clearly a state enemy in the eyes of the US, would have been treated more kindly than Frederick Pierucci. The Assange case must also be taken into account here (ECHR Statistical Annexes Collection ./17 and Annexes Collection ./18).

With regard to violations of Article 3 of the ECHR, submissions have already been made and, judging by the opinions of Sickler and Husain QC, there is no doubt that the conditions of detention in US prisons which would specifically affect the applicant of the application do not meet the standard of the ECHR and the jurisprudence of the ECtHR (Appendices ./19 to ./20). It should be borne in mind that these conditions fell on people in remand, i.e. as yet innocent persons. The burden of proving the absence of conditions in prisons that violate fundamental human rights and freedoms lies with the State if the complainant's reasoning is convincing and proportionately detailed. In the case of U.S. guarantees, caution should also be exercised, as they have been proven false once before, as in the Wyss case (Appendix ./21).

In a procedural document dated May 27, 2021 (Document No. 254), the petitioner submitted for further argument the legal expertise of Dr. Manfred Nowak, LL.M., University Professor, on the subject of the U.S. readiness to ratify international treaties for the protection of human rights and international criminal law and to adopt the optional complaint procedure contained therein, on the subject of the U.S. criminal justice system in the light of minimum standards of legal statehood and human rights, as well as the conditions of detention in American prisons

In them, he criticized that four US deputies had allegedly claimed that Firtash enjoyed privileges in Austria because of his financial means (Annex ./1). In response to an allegation of defamation of Austrian justice authorities or employees, however, the prosecutor's office declined to initiate the proceedings criminal proceedings under Article 35c of the Law on Prosecutor's Office (Annexes ./2 and ./3), which can be justified solely on the grounds that the case involves the expression of a political opinion.

An inquiry by the Austrian press agency APA to the Austrian Ministry of Justice further revealed that there were five meetings in which the request for Firtash's extradition to the U.S. was to be supported at the political level, with the U.S. not having procedural status as

a party to the case (Annex ./4). The ZIB 2 television program also covered these incidents (Annex ./5).

In a communication dated 15 July 2017 and in a note dated 21 July 2021 (Document No. 256), the applicant of the motion notified the trial court, with the submission of two annexes, that "he had been appointed Counsellor of the Permanent Mission of the Republic of Belarus to the International Organizations in Vienna and a note was sent to the United Nations Industrial Development Organization (UNIDO) about his appointment in the International Organizations in Vienna on 29 June 2021".

In its request dated October 11, 2021 (Document No. 260), the petitioner of the motion additionally submitted a legal opinion by Dr. August Reinisch, M.A., LL.M. (NYU), Professor at the University of Mag. Dr. August Reinisch, LL.M. (NYU), on the question of privileges and immunities of international law for representatives of States at UNIDO in Austria.

After an exchange of several letters between the Court of First Instance and the Federal Ministry of Justice pursuant to Article 57 of the Extradition and Legal Assistance Regulation, the latter finally informed that the applicant did not have any privileges and immunities in Austria, there was no legally valid accreditation with UNIDO and the applicant did not have a legitimation card issued by the Federal Ministry for European and International Affairs (Document No. 265).

In the contested ruling (Document No. 268), the trial court dismissed the application to reopen the extradition proceedings.

The court did not pay any attention to the content of the arguments and the legal opinion on the asserted international immunity in view of the applicant's appointment as a counselor of the Permanent Mission of the Republic of Belarus to the United Nations Industrial Development Organization (UNIDO), but merely referred to the opinion given by the Federal Ministry of Justice under Article 57 of the Extradition and Legal Assistance Regulation, according to which the person concerned was not granted immunity.

On the subject block of sufficient suspicion of a felony, the trial court cited, in a brief statement, the reasoning behind the reasoning that the principle of formal verification should continue to be applied and that only immediate proof of the impossibility of committing the crime would render extradition inadmissible.

The witnesses and documents offered by the affected person were, in the trial court's view, not suitable to directly and beyond doubt rebut the suspicion that a crime had been committed. The main trial should not devolve into extradition proceedings, and the collation of conflicting testimony is a key task of the trial to be conducted.

The argument that there has never been any investigation in India is irrelevant.

On the issue of political motivation, the Court of First Instance explained that the Vienna Higher Land Court in its judgment considered all the circumstances available at the time of the judgment. And if the affected person relies repeatedly on the items of evidence on the political interests of the United States in Ukraine and the affected person's contrary interests, it should be pointed out that both established circumstances had already formed the basis of the judgment of the Higher Land Court. The Higher Land Court furthermore found that it was the verification of the extradition request itself, and not the moment of detention, that was decisive. Witness Dan C. Webb, in connection with Special Prosecutor Robert Mueller, was not given any weight by the trial court out of time constraints because the circumstances described concerned 2007. The e-mail correspondence between Konstantin Kiliminik and Zev Furst, taken separately, also lacked, in the court's view, any clear probative value.

The witnesses Nalyvaychenko, Klyuyev, Shokin, Sivkovych, Zavorotny and Kolomoisky drew, with the exception of the latter, exclusively subjective conclusions from the events they described. The fundamental geopolitical interest of the United States, however, has already been the subject of the trial. The subject of the decision of the court of first instance is the political situation in Ukraine, the situation of the affected person in Ukraine, the interests of the requesting state there and the events of October-November 2013 and during Euromaidan, and definitely not the subjective opinions of witnesses and newspaper articles. The Higher Land Court reasonably reached different conclusions than the court of first instance in view of these objectified events.

On the testimony of the witness Kolomoisky, the trial court cited reasoning that here once again it was a subjective inference, recognizable by the phrase "had in mind." In addition, the U.S. imposed a travel ban on the witness and his family in March 2021 because he had abused his official position

with authority during the 2014-2015 term of office for personal gain. In this context, and given the fact that the conversation was about corruption, it is understandable that Nuland only wanted to warn the witness not to abuse his position for corruption, "lest he suffer the same fate as Firtash". And under a different interpretation, the evidence, taken by itself, is not suitable to undermine the ruling of the Vienna Higher Land Court because only one circumstance in the extensive evidentiary record is challenged.

On the witness Kallstrom, the trial court explained that here, moreover, these were not particularly well-considered legal views that were not suitable to lead to a decisive change.

In view of the new circumstances and evidence adduced in this regard, the decision on the merits could not have been different.

On the barriers to extradition part 1, s. 19 of the Extradition and Legal Aid Act, the trial court cited the reasoning that Joel A. Sickler's statement was the opinion from which legal conclusions were drawn in the so-called forensic expert opinion of Hussain QC. The opinion of University Professor Dr. Novak, LL.M., although of better quality, documents, although some critical points are evident, but in no way a consistent pattern of reliably verified, extensive and systematic human rights violations or the fact that the U.S. criminal justice system in its totality can no longer meet the rights guaranteed in Article 3 of the ECHR. Novak's opinion remains an isolated opinion, otherwise extradition to the US would, as a general rule, be inadmissible.

To establish an impending violation of Article 3 of the ECHR, Frederic Pierucci's statement is again simply an assertion by an individual, rather than an objective and reliable source of information. Furthermore, it has not been established that the affected individual would have been placed specifically in Chicago MCC prison had he been extradited. The July 17, 2017 report of the UN Working Group on Arbitrary Arrest, the precursor to the visit to Chicago MCC prison, apart from a few exceptions, does not criticize the specific conditions of imprisonment and is the most objective and reliable source available.

With regard to Art. 6 ECHR, in the court's view, justifiable reasons must be given for the impending violation of Art. 6 ECHR in the criminal proceedings of the requesting State. Pierucci's account, however, does not represent any objective and reliable source and is an isolated case. Equally unsuitable for the desired corroboration and assessment of the UN Special Rapporteur in the Julian Assange case. From the legal opinion of Prof.
University of Dr. Nowak, LL.M. does not arise from the threat of a violation of Article 6 of the ECHR.

The decision was appealed against within the time-limit by the affected person with four annexes (Document No. 273 in conjunction with Document No. 279), in which he criticizes the decision of the first-instance court in respect of all the thematic units referred to in the application for reopening of the proceedings and alleges procedural, legal and discretionary errors, as well as further arguments raised during the pending appeal proceedings, dated 26 April 2023 under Art. 8 ECHR and Art. 7 of the EU Charter with further 13 Annexes, in which he refers in particular to what he and his family had suffered in the meantime "putting down roots" in Vienna, entry and visa regulations in the United States and a judgment of the Graz Higher Land Court (9 Bs 7/23g) in another case on this topic.

The Vienna Supreme Public Prosecutor's Office did not give its response to the affected person's complaint.

The decision on the complaint had to wait until the Constitutional Court's decision on the motion of a party to the case, timely filed by the applicant of the complaint under Art. 140

para. 1 (1) (1) (d) of the Constitution (Art. 62a (6) of the Act). 1 para. 1, part 1, letter d. 140 of the Constitution (Art. 62a, part 6 of the Law).
"On the Constitutional Court"). The Constitutional Court rejected the examination of the complaint in its decision No. G 115/2022-12 of July 1, 2022.

Although the arguments of the complaint can only be followed in part, the complaint is ultimately justified.

In his complaint the applicant first points out that in the meantime he already had immunity as a diplomat, but the trial court did not make any ruling in this respect, but merely referred to the Federal Ministry of Justice's view that he did not have any privileges and immunities. According to the arguments of the complaint, the proceedings should have been terminated pursuant to Article 197(2a) of the Code of Criminal Procedure in conjunction with Article 9(1) of the Extradition and Legal Assistance Act, in connection with which the concurrently submitted legal opinion of Dr. August Reinisch, LL.M. (NYU), Mag. Mag. University Professor, dated March 29, 2022 (Annex ./1), was pointed out. Immunity in international law constitutes, according to the Applicant, temporarily limited procedural obstacle and is a prejudicial issue for the question whether the extradition proceedings should be reopened and whether the decision in the proceedings to reopen the case can be made at all, as a consequence of which the determination of the first-instance court is null and void by analogy with paragraph 9b, part 1, article 281 of the Criminal Procedure Code. 1 of Article 281(1) of the Code of Criminal Procedure. At the outset, it should be noted that proceedings against a person against whom prosecution cannot be instituted or continued on the grounds of legal norm, should be suspended pursuant to Article 197(2a) of the Code of Criminal Procedure and continued only after the grounds for obstruction have disappeared.

According to the title of Article 197 of the Code of Criminal Procedure, it is intended for investigations, but it is also applicable in the main proceedings, this time the court must decide on the suspension of proceedings (Nordmeier in Fuchs/Ratz, Vienna Commentary on Article 197 of the Code of Criminal Procedure, paragraph 10).

In view of the relevant reference to Article 9(1) of the Extradition and Legal Assistance Act, the provisions of the Code of Criminal Procedure are also valid in the scope of application of the Extradition and Legal Assistance Act, unless it follows otherwise from the provisions of this federal law. Although an extradition case is not a criminal proceeding, it is based on the prosecution of the person concerned, and therefore one must first agree with the applicant for a remedy in the sense that the extradition proceedings should also be suspended if immunity is already *ex officio* pursuant to Article 197(2a) of the Code of Criminal Procedure.

The Agreement between the Republic of Austria and the United Nations Industrial Development Organization (UNIDO) (Federal Law Gazette III No. 100/1998), on which the applicant relies for the immunity it asserts, provides in section 32, paras. "(a) that members of permanent missions accredited to UNIDO are entitled to enjoy the same privileges and immunities as the Government grants to members of diplomatic missions accredited to the Republic of Austria of corresponding rank.

These privileges and immunities are regulated by the Vienna Convention on Diplomatic Relations (Bulletin of Federal Legislation No. 66/1966), which stipulates in part 1 of article 31 that a diplomat is immune from the criminal jurisdiction of the receiving State and, with various exceptions not relevant to this case, immune from civil and administrative jurisdiction.

However, if the applicant erroneously believes that not only the extradition case itself but also the present review should be suspended, he overlooks the fact that Article 31 of the Convention, in its meaning and purpose, is aimed at judicial review.
"prosecution" of a civil, administrative or criminal nature, and hence the passive procedural position of the diplomat. On the contrary, this does not cover cases where the diplomat himself initiates legal proceedings. This follows already from Article 3(3) of the Convention, which expressly regulates (irrelevant for the present case) the remaining details in case the diplomat itself initiates the judicial process and thus expressly provides for the possibility of active litigation by a diplomat.

The extradition case underlying the reopening process has already been concluded and the court decision has entered into legal force, which means that the reopening of the case should be regarded as a judicial process initiated solely by the complainant himself and thus as an independently initiated judicial proceeding. Any "persecution" in the present case is terminologically out of the question, since he could at any time terminate the present proceedings himself by withdrawing his application. In view of his stated complaint, however, it is precisely not to be assumed that he intends to do so, and thus it is also unclear to what extent the applicant for a remedy wishes to be burdened by the judgment which he expressly requests further.

Appellant's arguments regarding the application of case law by analogy to the suspension of attorney disciplinary proceedings are unpersuasive because the subject matter of the processes he cited in his arguments were ordinary remedies in ongoing disciplinary proceedings and thus concerned ongoing proceedings to discipline the individuals involved.

In view of this, the process to reopen the case was not ultimately suspended quite reasonably.

As regards the applicant's claim to reopen the extradition proceedings, the following assumptions should be made:

Pursuant to Article 39 of the Law on Extradition and Legal Assistance, an extradition case is subject to reopening at the request of the affected person or the prosecutor's office, or at the initiative of the court, if new circumstances or evidence emerge that appear suitable to raise significant doubts about the correctness of the court's decision. The decision to reopen the proceedings shall be taken by the court with the appropriate application of the provisions of the second to fifth sentences of paragraph 2 and paragraph 3 of Article 357 of the Code of Criminal Procedure. Unless otherwise provided by the Extradition and Legal Assistance Act, pursuant to Article 9(1) of the Extradition and Legal Assistance Act, the provisions of the Code of Criminal Procedure (Article 352 et seq. of the CPC) are applicable, and according to Article 39 of the Extradition and Legal Assistance Act, it is sufficient that new circumstances or evidence raise significant doubts as to the correctness of the court's decision on the admissibility of extradition (cf. GöttFlemmich/Riffel v.Höpfel/Ratz in the Vienna Commentary, 2nd edition, to Art. 39 of the Extradition and Legal Assistance Act, para. 1).

New circumstances or evidence must, either alone or in conjunction with extradition documentation and the result of possible investigations, raise serious doubts as to the correctness of the decision, and new legal positions do not constitute grounds for reopening the proceedings (ibid., para. 5). To reopen proceedings in favor of the person concerned, circumstances and evidence that have not yet been adduced in the ongoing proceedings, even if the persecuted person was already aware of them at the time, are sufficient to reopen the proceedings.

Consequently, the reiterated reasoning of the Vienna Public Prosecutor's Office that the person concerned had not explained why he had not had the facts and evidence he had mentioned earlier was legally irrelevant (cf. Levisch in Fuchs/Ratz, Vienna Commentary on Art. 353 of the Code of Criminal Procedure, paragraph 25, according to which even intentional concealment is not an obstacle to reopening the case).

New means of proof are means of proof that have not come to the attention (and use) of the court. New means of proof may serve both to prove new facts and (only) to support previously asserted but then unprovable facts (cf. ibid., para. 45 ff.). New evidence is, for example, documents, witnesses or other evidence, but not pure inferences, opinions or assumptions of witnesses (cf. ibid., paras. 48-50).

A forensic expert's report may also become new evidence, and, as a general rule, the submission of private reports is included in the calculation. According to the latest Supreme

Court jurisprudence, only the research results contained in a private opinion should be considered as new evidence (cf. ibid., paras. 57-58).

Suitability in this particular case should be understood as the property of the new circumstances and evidence adduced to justify (or in conjunction with already known evidence) the possibility of raising serious doubts as to the correctness of the court's decision within the meaning of Article 39 of the Extradition and Legal Assistance Act and of arriving at a different solution to a matter requiring evidence. They must therefore relate to a circumstance significant for the reopening of the proceedings and the possible influence of this circumstance on the court's decision is to be assessed. This double check is in line with the state of the art of procedural law dogmatics and the criteria for admissibility of motions to presentation of evidence. The court practice (cf. legal information system RIS-Justiz RS0099446) performs a suitability test in the understanding of the test of the relevance of motions to introduce evidence during the trial (within the meaning of Article 281(1)(4) of the Code of Criminal Procedure). It implies that a motion to reopen the proceedings shall be granted if it is possible that on the basis of the new circumstances or evidence adduced (alone or in conjunction with other results of the evidentiary process) a different assessment of the issue to be proved can be reached (cf. ibid., paras. 60-62).

The reopening process should be limited to a test of suitability in the above sense and should not involve a preliminary assessment of the evidence. The evidentiary value of the new means of proof should be assessed in the new process that resolves the merits of the case (here: extradition case). Only a certain minimum level of evaluation of evidence is permissible in the reopening process (cf. ibid., para. 66 ff.).

The complaint and the application underlying the trial court's decision relate, as already set out in the summary of arguments, to new circumstances and evidence on several levels, focusing on the question of whether there is sufficient suspicion of a crime, whether there may be political motivation on the part of the requesting State, and whether there may be other obstacles to extradition within the meaning of article 19 of the Act.

"On extradition and legal assistance". All paragraphs of the complaint - partly with the exception of India's crime scene argument - thus relate, in principle, to circumstances relevant to the judgment.

On suspicion of committing a felony:

The basis for the verification of sufficient suspicion of a crime is para. "c, part 3, article 10, paragraph 3, of the Treaty on Mutual Extradition between the Republic of Austria and the Government of the United States of America (Federal Law Gazette No. III 1999/216, as amended by the Federal Law Gazette No. 2010/5), according to which, in addition to a copy

of the arrest and detention warrant and, if available, a copy of the indictment, documents containing sufficient information giving reasonable grounds to believe that the person to be extradited has committed the criminal act for which extradition is requested and that he or she is the person named in the arrest warrant should be attached.

According to the current jurisprudence of the higher courts for this purpose it must be verified whether the documentation attached or supplemented to the extradition request allows a *reasonable basis to believe,* in the sense of mere *probability* ("*reasonable basis to believe"*), that the person concerned committed the offences in question ("*concept of probable cause",* Explanatory Notes to Government Bill 1083, Schedule 20, Legislative Period 21). There are no high requirements for this (Explanatory Notes to Government Bill 1083, annex number 20, legislative period 21). It is clear from the text of the provision itself, as well as from its purpose and meaning, that it is precisely not possible to require proof of guilt that meets the legal standards of the requested State (cf. Explanatory Notes to Government Bill 1083, annex number 20, legislative period 17, 21; specifically with regard to the Extradition Treaty with the United States, e.g., 15 Os 63/22m).

Contrary to the arguments stated in the complaint, according to which paragraph "c" of part 3 of Article 10 of the Extradition Treaty with the USA allegedly provides a different criterion for verification from Art. 33 of the Law on Extradition and Legal Assistance, and from the obligation of justification of the requesting State logically follows also the obligation of verification of the requested State, so that the formal principle of verification in the extradition exchange between Austria and the United States of America does not directly apply, the principle of formal verification should be unconditionally assumed in the scope of application of the Extradition Treaty with the United States, although with the difference that, in contrast to the scope of application of Art. 33 of the Law on Extradition and Legal Assistance, the principle of formal verification should also be applied in the scope of application of the Extradition Treaty with the United States of America.

By applying the principle of formal verification, on the one hand, the foreign court called upon to render a judgment should not prejudge the test of guilt and, on the other hand, it prevents undesirable prolongation of the extradition proceedings. The assessment of the evidence and the credibility of the person to be extradited is generally not involved (cf. GötFlemmich/Riffel in Höpfel/Ratz, Vienna Commentary, 2nd edition, on Art. 33 of the Extradition and Legal Assistance Act, para. 3).

A rebuttable presumption of reasonable suspicion of the commission of an offence may be rebutted if serious doubts about the suspicion of the commission of an offence arise from available documents or on the basis of relevant reasonable arguments of the person affected

and there are or are suggested to be evidence to immediately rebut the suspicion. Only in these cases is there an independent obligation to verify the suspicion of an offense (cf. ibid., para. 4). Documents that are in conflict with the presumption of the suspicion of an offense described by the requested authority without directly and undoubtedly disproving it, on the contrary, do not entail a duty of verification. The assumption of a far-reaching duty of verification in the requested State would run counter to the essence of legal aid, which is designed precisely to enable the person concerned in the requested State to defend himself or herself against the decision underlying the extradition request in a process based on the rule of law (cf. RIS-Justiz RS0125233; 13 Os 16/09s).

Given this background, the applicant's arguments, by means of which he seeks to question the existence of a suspicion of a crime, are uncelebrated.

At the outset, it must be objected to the appellant that the Vienna Higher Land Court in its judgment in Case No. 22 Bs 291/15b of February 21, 2017 did not in any way rely solely on the testimony of the two witnesses and the document "Annex A", but explicitly took into account all documents transferred retroactively by the target State, which included, for example, also the results of the wiretaps, the dossier of e-mails as well as extensive statements and explanations by the special prosecutor Jennifer Shipman (e.g. document No. 160). The second instance court only emphasized the testimony of both witnesses in its decision (cf. complaint page 5: "in particular").

Further, it must be borne in mind that in the present case - unlike the reopening process, which is based on a criminal case and is generally concerned with raising doubts as to a conviction or acquittal - doubts as to the suspicion of a crime are subject to the limitation of the principle of formal verification already described above and therefore, in order to justify the reopening of the case, they must be suitable to directly and indisputably rebut even a mere suspicion of a crime, which must not meet the high standard of not turning the main trial to be conducted in the target State into an extradition case.

When a remedy applicant criticizes the fact that witness Reddy expressly recanted his earlier testimony on his second, third, and fourth witness statements and that this is explicitly recognized in the literature as a grounds for reopening proceedings, he fails to recognize precisely these different criteria for reopening criminal proceedings and reopening extradition proceedings and overlooks the limitation in an extradition case of the principle of formal verification. While it must be agreed with him that the means of proof he proposes are suitable to mitigate the suspicion of a crime against him, they are not, however, suitable to rebut it directly and undoubtedly.

In particular, given the voluminous arguments, it must be assumed that - along with hitherto available, target-state produced documents, such as e-mail correspondence, transcripts of wiretapped telephone conversations, and Special Prosecutor Shipman's explanations - there are now available from witness Reddy both incriminating and testimony at least in part withdrawing his earlier explanations, and with respect to the second prosecution witness Raghav, there are explanations from Lee, Ushanov, and Shetler-Jones that put the p With respect to the Power Point slide "Appendix A," there are now documents indicating that this document was not created by Boeing, as originally believed, but by an employee of the consulting firm McKinsey & Company.

Even taking into account these new circumstances and means of proof, the assessment of whether there is sufficient suspicion of a crime under the premises set out at the outset would not lead to any different result, since at least a mere suspicion of a crime is still present in any case, even in the light of exculpatory evidence, since it is a regular occurrence in a criminal case that inculpatory and exculpatory evidence contradict each other or witnesses change their opinions for various reasons In view of the further arguments that the co-accused Gajendra Lal was pressurized by the agencies while giving evidence, it cannot in any case be directly and definitely ruled out that the person concerned committed the acts charged against him. Notwithstanding the arguments in the complaint, though along with other options, it is further conceivable, so that, as the trial court rightly recognized, it would be, after all, a pure act of evaluating the evidence in the case on the merits, given to the trial in the target State, to see which of the conflicting testimony - subject to the further outcome of the evidentiary process - would be found to be true.

Nor is the other authorship of the "Annex A" document suitable for rebutting the suspicion of a crime to the extent required without moving the main proceedings to an extradition case, without a full evidentiary process, which precisely should not take place in an extradition case. In particular, as previously stated, it should also be taken into account that, notwithstanding the arguments in the complaint, the requesting State, in addition to "Annex A", also produced numerous other documents during the proceedings.

It is only to be agreed with the appellant that the trial court, with its anticipatory assessment that the situation of pressurizing Singh in view of the transmitted videotape appeared inconclusive, overstepped the bounds of the test criteria in the reopening proceedings and made an anticipatory and thus impermissible evaluation of the evidence in terms of its content.

However, the reasoning of the prosecutor's office, which is no less, and partly very detailed and evaluative of the evidence, goes in the wrong direction, because the scrutiny, on the one

hand, also clearly goes beyond the mere test of suitability, and, on the other hand, such an evaluation, in view of the principle of formal verification and the lack of suitability of the circumstances and evidence to directly and undoubtedly disprove the suspicion of a crime, should not have been entered into, doing the right thing, at all.

And if the circumstance that there has never been any investigation at the place where the crime was committed in India has also been cited as an argument to rebut the suspicion of crime, it should be pointed out that this circumstance may have different causes and neither by itself nor in conjunction with previous facts and evidence is suitable to rebut the suspicion of crime.

In summarizing the foregoing, it is necessary, while agreeing with the trial court, to deny the fitness of the facts and evidence presented to directly and unquestionably rebut a sufficient suspicion of a crime in conjunction with all other available documents.

And if the applicant of the complaint sees in the absence of an oral hearing an imaginary procedural error, he overlooks the fact that the refusal to hold an oral hearing (which must be held, in accordance with the fourth and fifth sentences of Part 2 of Article 357 of the CCP, only as an exception) on a motion to reopen the proceedings in the case constitutes a procedural error only when the circumstances that justify the motion and their suitability entail a change in the decision that has entered into legal force,
can only be ascertained by direct examination of the evidence (legal information system RIS-Justiz RS0129508, cf. Levisch in the Vienna Commentary on Article 357 of the CCP, paragraph 23). To what extent, however, the circumstances justifying the application can only be ascertained by direct examination of the evidence, the applicant does not set out, nor is this apparent from the available affidavits and other written documents produced, so that an oral trial was not necessarily required either in the proceedings before the trial court or in the present appeal proceedings.

The appellant, while generally criticizing that the trial court did not go into all the relevant new facts and evidence cited in detail and simply bypassed them, as a result of which the decision allegedly has the defect of insufficient substantiation within the meaning of paragraph 5 of part 1 of Article 281 of the CCP. 1 of Article 281(1) of the CCP, does not indicate in this statement a specific relation to the circumstances of the case, such as, for example, a reference to what circumstance or what evidence it specifically refers to and why it would be necessary. While it is true that the trial court did not go into all of the proffered evidence in all its details, and in part considered it only in a lumpy fashion, the evidence proffered to the trial court but not subject to more careful consideration, as will be set forth below, already lacks the property of relevance.

And if the revision petitioner regards the fact that there was no criminal investigation in India as important within the meaning of s. 17(1) of the Extradition and Legal Aid Act, it must be brought to the fore that under the text of s. 17 of the Extradition and Legal Aid Act, extradition is inadmissible if in respect of the person to be extradited, in a case involving the commission of a criminal act

1) an acquittal was rendered by a court of the state of the commission of the crime, which entered into legal force, or the person was released from prosecution for another reason, or 2) the person was sentenced by a court of a third state and the sentence entered into legal force and the punishment was fully executed, or the person was fully or partially paroled from serving the sentence, or if the statute of limitations for the execution of the sentence under the legislation of the third state has expired.

Based on the literal text, article 17 of the Extradition and Legal Assistance Act applies only to judicial decisions of the State of the crime or a third State, and the literature suggests that its application should also be extended to decisions of the prosecutor's offices, if such, under foreign law, are also vested with executive power (cf. Göt-Flemmich/Riffel in Höpfel/Ratz, Vienna Commentary, 2nd edition, to Art. 17 of the Extradition and Legal Assistance Act, paras. 1 and 2). The action alleged by the complainant in the sense that this provision also covers the circumstances of cases in which the case has not even reached the investigation stage is not covered, however, either by the literal text or by the intention of the provision. Even if one cannot disagree with the complainant that the purpose of Article 17 of the Extradition and Legal Assistance Act is, inter alia, to assess the circumstances of the case, which can best be done in the State where the crime was committed and therefore the decisions of the State where the crime was committed are relevant, it is the decision of the State where the crime was committed that is missing in the present case and the provision serves primarily to implement the principle of "ne bis in idem", i.e. to avoid double prosecution or double jeopardy. This, however, in view of the absence of an ongoing investigation against the person concerned in India, is precisely not possible. Thus, the circumstances and evidence adduced in this regard do not, as the trial Court rightly held, relate to any circumstance relevant to the judgment.

On the issue of possible political motives of the extradition request, it should be noted first of all that the content of the norm of part 3 of Art. 3 of Art. 4 of the Extradition Treaty with the USA is such that the affected person, in addition to the obstacle to extradition in Art. 19 para. 3 of the Law on Extradition and Legal Assistance, must in any case - i.e. regardless of the type of conduct incriminated - be protected from politically instrumentalized extradition

processes (cf. Supreme Court decision of 25 June 2019, case nos. 14 Os 142/18s, 14 Os 33/19p-26, document no. 226, p. 16).

In addition, the test for this obstacle to extradition should not - in contrast to the test of whether there is sufficient suspicion of a crime - be based on the principle of formal verification, but on a stricter criterion (cf. Murshetz, Extradition and the European Arrest Warrant, pp. 295 ff. and p. 298; also the Prosecutor General's Office in its cassation appeal, Document No. 216a, pp. 17 et seq.). If, after the examination, doubts remain as to the existence of a consequential or cited obstacle to extradition and they cannot be reliably removed even by means of permissible safeguards of the requesting State, the court is obliged to declare the extradition inadmissible (cf. Göth-Flemmich/Riffel in Höpfel/Ratz, Vienna Commentary, 2nd edition, to Art. 33 of the Extradition and Legal Assistance Act, para. 7, and Attorney General's Office in Document No. 216a, p. 10).

Regarding the test of obstacle to extradition under Article 4(3) of the Extradition Treaty with the United States, it should also be assumed that the circumstances stated there can generally be ascertained only on the basis of evidence and, in view of this, indirect adducement of circumstances involving objectifiable circumstances is admissible (cf. the Supreme Court's decision in Case No. 14 Os 33/10p-26 of June 25, 2019; Document No. 226, definition page 17).

Thus, unlike the test of suspicion of a crime, a different scale must also be applied in testing whether an extradition request is politically motivated and in assessing whether certain circumstances and evidence are suitable to raise serious doubts about the correctness of the court's decision.

In view of these, as well as other premises still to be explained, the court does not share the trial court's reasoning on this subject block.

The reasoning presented at the beginning of the judgment that "the epitome of the appellate court's activity" is allegedly the full consideration of the trial court's decision and therefore it is undoubtedly true that the Higher Land Court of Vienna rendered its decision "taking into account the reasoning of the trial court and after a comprehensive assessment of all the circumstances available at the time of the decision, and that the decision was already based not only on the political activism of the affected person, but also on the US interest in a Western-oriented Ukraine.

It must be agreed with the applicant that the new evidentiary material submitted, which at least in part must be recognized as relevant to the case, goes considerably beyond the material available in the former case and is precisely not limited to the framework circumstances cited by the trial court.

The fact that a certain item of evidence has itself already appeared in the proceedings does not exclude the possibility of introducing further evidence on a certain topic, because the new evidence presented may serve both to confirm new circumstances and (simply) to support previously asserted but at the time unprovable circumstances (cf. Levisch in Fuchs/Ratz, Vienna Commentary on Art. 353 CPC, para. 46).

Furthermore, also circumstances and means of proof that relate to a time before or after the extradition request, in particular against the background of explicitly recognized by the Supreme Court as admissible cannot, in and of itself, be regarded as inherently unsuitable, even though this may, in a particular case, after appropriate verification, be perfectly true of some of it.

The applicant's arguments are also fair in that the trial court considered the newly discovered circumstances and evidence in part in isolation, in particular both among themselves and in relation to the previous circumstances and evidence, and did not sufficiently review them.

In this general overview, it is also important to take into account that in the reopening proceedings the court is not bound by the relevant considerations of reasonableness in its decision (here: judgment) (cf. ibid., para. 65), so that the test of suitability must be carried out by means of an independent reasoning, taking into account already available in conjunction with (relevant) newly discovered circumstances and evidence. The reference of the trial court to the fact that "the Higher Land Court of Vienna rendered its decision in the light of the reasoning of the trial court and after a comprehensive assessment of all the circumstances available at the time of the decision" remains, therefore, insubstantial and lacks the required own reasoning in view of the newly offered circumstances and evidence. Moreover, the ruling of the Higher Regional Court of Vienna was not based on the question of possible political motives for the extradition request, not primarily on the unambiguous results of a comprehensive evidentiary process, but, for lack of such at the time, primarily on general considerations and evidence, to which the Office of the Public Prosecutor General objected (cf. document No. 216a, p. 16 ff.), but which the Supreme Court found admissible as a matter of principle.

The Court of Cassation, after taking into account the now newly cited circumstances and evidence, can no longer fully accede to the considerations of the Higher Land Court.

At the outset, it must be made clear that the complainant's extremely voluminous arguments for reopening the case are, in part, completely remote from the circumstances of the case which is the subject of the complaint and, to put it concretely, relating to other persons and circumstances of the action are not in a position to justify the reopening of the

proceedings. And if the relevant arguments seek to call into question the "long and democratic tradition of the rule of law in the United States" as a whole, the complainant should counter that the cases cited by it partly incomplete, partly polemical, and partly far removed in time from the present extradition request (see Huawei/Meng Wanzhou), while the notion used by the Vienna Higher Land Court in its reasoning for the preliminary ruling of "tradition" by its very nature can only refer to the past. In addition, in view of the large area and population of the United States and the correspondingly large number of criminal and extradition cases pending there, various individual cases within single digit numbers, even if the arguments are correct, cannot be recognized as suitable for questioning the democratic tradition and the legal polity of this country as a whole. In view of this, the trial court was not inclined to deal in detail with arguments pertaining to other cases.

The same applies to various newspaper articles and other commentaries, writings, television reports, tweets, unverified postings on WikiLeaks, scientific analyses, and various reports that are partly irrelevant to the specific circumstances of the case or contain only generalities, partly statements of opinion by individuals - even if they are politicians - and thus are also unsuitable to state a specific ground for reopening the case under procedural law. Nor can any apparent probative value be ascribed to the copy of Bernd Greiner's book cover attached to the complaint (Appendix ./2) as evidence that the general statement that the United States is a democratic state of law with a long tradition does not make it immune from instrumentalization of justice for political reasons in an individual case, for lack of specific relevance to the present case.

According to the applicant's repeatedly cited conversations between his US representative of interest Dan K. Webb and the representative of the special prosecutor Robert Mueller in 2017, it must be stated that even this circumstance, for reasons of timing, does not allow a meaningful conclusion to be drawn as to the motives behind the extradition request made several years earlier, to which the special prosecutor had nothing to do. Even if, several years later, there were indeed U.S.-initiated conversations that went beyond the plea-bargaining usual in the U.S., no rational inference can be drawn from this about the earlier circumstances. Particularly with regard to the article by investigative journalist John Solomon presented in this connection, it should be mentioned that it has little or no independent content, but primarily reproduces the content of the applicant's procedural documents. Thus, the reference to this article is fundamentally a vicious circle that does not represent any additional value.

With regard to the circumstances surrounding the repeatedly alleged U.S. links between the complainant and Semyon Mogilevich, the Vienna Higher Land Court rightly pointed out in

its decision of February 21, 2017, that this circumstance is not directly relevant to the present proceedings, and the fact that the U.S. again and again (whether justly or unjustly) links the complainant's name with him is not new. While one must agree, however, with the complainant that, according to the available case file, the Austrian authorities do not have such evidence, this of course does not preclude the US from having information beyond that.

When Appellant points out that a tweet by Michael Carpenter, former foreign policy advisor to Vice President Biden, on Twitter on June 25, 2019, in which he refers to the Complaint's complainant as a "Kremlin-connected oligarch" who "knows the inner workings of Putin's kleptocratic system," was overlooked by the trial court, this, while true, is irrelevant for lack of relevance. In particular, the relevant arguments in the complaint that the allegations about India in the tweet were not the subject of the complaint turn out to be incorrect or incomplete, because the essence of a "tweet" is precisely the publication of brief, apt messages, and this tweet contains, in addition, a link to a multi-page article that thematizes the allegations about India.

The same is true of statements by Senator Roger Wicker and U.S. Justice Secretary Jeff Sessions, who referred to Firtash as part of organized crime. While it is unusual for a Justice Secretary to make such a public statement about an unconvicted person, it cannot be inferred from any specific circumstance regarding an extradition request made several years earlier. Moreover, such statements are merely the opinions of individual politicians. Thus, while it is clear from both the tweet and the recent statements that these individuals rejected Firtash not only for criminal but also possibly for political reasons, since none of these individuals were in any way involved in the extradition request, no conclusions relevant to the judgment can be drawn from these statements.

But when the trial court, lumpily and without considering the content of their testimony at all, assumes, inter alia, that witnesses Nalyvaychenko, Klyuyev, Shokin, Sivkovych and Zavorotny draw conclusions only on the basis of the described and of their experiences, and that their experiences allegedly relate only to the principal political interest of the United States in Ukraine, which has already formed the basis of the judgment and is undisputed, it underestimates their professional and political position, the size and significance of their personal observations, and fails to evaluate the new testimony among themselves and in conjunction with the already available findings of the trial.

Witness Nalyvaichenko, the former head of Ukraine's internal intelligence service (SBU) describes in his supplementary statement (Document No. 235, Annex ./1), inter alia, the very specific conversations that took place with him around the time of the repeated request for arrest and detention on February 26 and 27, 2014, the content of which was to limit the

complainant's influence by fabricating a criminal case against him and his media company INTER, also confirms that at that time those in power in Ukraine were in constant contact with the United States and the complainant's influence on political issues in Ukraine was curtailed by his arrest. Although he partly drew quite independent conclusions, contrary to the view of the trial court, he also gave specific testimony based on his own observations about the purposeful, backdated actions initiated by the United States and carried out by the authorities in Ukraine against Firtash and his influential media company, and that the day of sending a new arrest request on February 27, 2014 (Document No. 11) was also chosen, perhaps not for objective reasons.

Witness Kliuyev (Document No. 235, Annex ./2), who was the Chairman of the National Security and Defense Council of Ukraine from February 2012 to January 2015, gave noncontradictory testimony about constant contacts between Ukrainian government officials and U.S. representatives, testified in detail about Sivkovych, and explained that Victoria Nuland, during a meeting with Yanukovych on December 11, 2013, threatened sanctions against Yanukovych and persons in his entourage, specifically Firtash. In addition, his testimony regarding his former activities as Deputy Prime Minister for the Fuel and Energy Complex also provides clues that the person concerned had been on the radar of some U.S. politicians as early as late 2005 due to his position on the gas market. In conjunction with the other evidence offered, it is difficult to deny the relevance of these circumstances in advance, at least given that the Supreme Court did not object to the introduction of circumstantial evidence.

Witness Shokin, who was the Prosecutor General of Ukraine from February 10, 2015 to April 3, 2016 (Document No. 235, Attachment ./4) describes the comprehensive measures taken by the United States and Ukrainian authorities to prevent the complainant's return to Ukraine in December 2015, and describes in this regard the specifically fabricated criminal charges against the complainant, together with the rumor circulated about the threat of arrest in Ukraine. According to his testimony, he was not aware of the actual charges, although he should have been aware of them in view of his position if they were true. He recounts direct observations in this regard, that the person concerned had not yet lost his political weight in 2015-2016 and was quite purposefully kept from returning to the Ukrainian political scene.

Witness Sivkovych (Document No. 235, Annex ./5), who was Deputy Secretary of the National Security and Defense Council of Ukraine (NSDC) from 2010 to February 2014, recounts a long private conversation with President Yanukovych on 14 December 2013, in which the latter informed him of the details of his conversation with Victoria Nuland on 11 December 2013. According to him, Nuland had with her a folder with information about bank

accounts and property values outside Ukraine of Yanukovych, his son and close associates, among them the complainant, with Nuland threatening immediate sanctions. He also reiterated the maintenance of ongoing contacts between the U.S. and its Ukrainian "representatives" as well as U.S.-led measures between the fourth week of February and early March 2014 to remove people who might have had at least some pro-Russian influence.

In general, it should be taken into account in relation to all witnesses without exception that witnesses may have observed facts concerning the subject matter of the proceedings, either indirectly or directly, and thus also indirect observations may be relevant to the evidentiary process (cf. legal information system RIS RS 0097540 [T13]). Although subjective opinions, points of view, evaluations, conclusions, legal assessments and other intellectual acts cannot, as a general rule, be the subject of testimony (and as such cannot constitute a suitable basis for reopening proceedings), but only the actual observations underlying them (which can justify reopening proceedings), the court is not prevented from subsequently finding the conclusions expressed by the witness convincing and taking them into account in the evaluation of the evidence (cf. ibid., T7).

Witness Zavorotny (Document No. 250, p. 44 et seq.), a former adviser to Ukrainian Prime Ministers Mykola Azarov and Serhiy Arbuzov from March 11, 2010, to January 28, 2014 - along with inferences not fit as means of proof - as well as the already examined witnesses Lovochkin and Boyko, testified extensively on the basis of personal observation about the affected person's weighty position in Ukrainian politics and economy, therefore it should be recognized that his testimony is also suitable to show the affected person's great influence in Ukraine.

Finally, the trial court's reasoning about the witness Kolomoisky, who on August 21, 2020 (Document No. 250, p. 59 et seq.) was very specific and direct about the conversation between him and Nuland about Firtash, was unconvincing, and the trial court's reasoning about this witness was pure inference based on a preliminary assessment of the evidence that goes so far as to attribute to the conversation, in view of Kolomoisky's March 2021 ban on entry to the United States, an abbreviated content that was not in the scope of the witness's testimony.

When the Court of First Instance referred to the fact that Kolomoisky, due to the use of the word "had in mind" in the sentence about the conversation with Nuland, expressed pure inferences, the appellant convincingly explained that the Russian-language original of the statement implied that the word used rather sounded as follows "said" rather than "meant" ("she said"), in view of which a new translation was also attached to the complaint (Attachment ./3).

And when, finally, the trial court points out that the witness, "despite the accurate interpretation of the conversation, is not suitable to undermine the ruling of the Higher Land Court of Vienna, as it challenges only one circumstance from the extensive evidentiary basis", this reasoning proves to be incorrect, because up to now, apart from isolated evidence, there was precisely no extensive evidentiary basis for assessing possible political motives for the extradition request, and the ruling of the Higher Land Court of Vienna on this issue, as previously stated, was based primarily on general considerations and circumstantial evidence.

With regard to the correspondence between Konstantin Kiliminik and Zev Furst submitted, one cannot share the generalized view of the trial court that it has no discernible evidentiary value at all, since it follows quite specifically from Zev Furst's letter of 11 December 2013 that Nuland wanted to meet with the complainant in person precisely in the period between the first arrest requests. In conjunction with witness Kallstrom's statement that such a meeting would, on the one hand, violate U.S. government directives and would also be absolutely unusual, yet the importance of this letter cannot be wholly denied, for it is, at least at the very least at least useful for the purpose to show specific the interest of the person responsible for Europe and Eurasia in the US State Department at the time, Victoria Nuland, in the complainant, precisely in the period between the first arrest requests. Kallstrom (Document No. 249, Annex ./8) confirms - although his other testimony was not always convincing and, moreover, appears to have been based in part only on information available to Firtash and his defense counsel - also that, during his tenure as the executive officer CIA (which is the organizational structure of the Department of Justice), in addition that there had never been a request for provisional detention which had been withdrawn, although the person concerned might have been detained, and that the United States had stated that there was an alleged flight risk, so that he had personal observations as to the unusualness of these actions. In light of the foregoing, it must be agreed with the appellant that Kallstrom's statement, too, contains not only personal legal views and conclusions but, in addition, quite independent, relevant observations. In the overall review of the already available and new evidence, the already submitted Document No. 10a, p. 253 should, in addition, also be taken into account. And even if the US agencies finally assured that there was no contact between Nuland and the prosecution authorities, it is still clear from Document No. 10a that there was at least communication between the State Department and the prosecution authorities in the course of the withdrawal of the first arrest request. The November 4, 2013 email explicitly follow discussions between employees ministry Justice Department U.S. Department of Justice, U.S. Department of State and CIA officials in Washington over the weekend and without the

involvement of the Chicago prosecutor's office, which ultimately led to the withdrawal of the arrest request for "strategic reasons," which strategic reasons, despite repeated questions from the requestor */according to the original, probably meaning the "requested" state/, were* never clearly explained and were closely linked in time to the radical political developments in Chicago.

Especially against this background, it cannot be denied that the proffered evidence specifically relating to Nuland and the affected person around the time of the extradition request is fit to raise serious doubts as to the correctness of the ruling within the meaning of s. 39 of the Extradition and Legal Assistance Act.

A purely verbatim reproduction of the reasoning of the Higher Land Court of Vienna set out at the time by the trial court that "even assuming that the relocation of the arrest request took place in view of the meetings in Ukraine, i.e. for political reasons in the broad sense of the word, this should not have an impact on the political motivation of the extradition request, which at that time had not even been sent yet, because part 3 of the Criminal Code does not apply to the extradition request. 3 of Art. 4 of the agreement requires only verification of the extradition request itself, not the moment of arrest", overlooks that although this is true in principle, but in view of the admissibility of circumstantial evidence it would not be risky or even inadmissible - especially after the involvement of new circumstances and evidence - to conclude one on the basis of the other.

To summarize the above, in the original proceedings before the First Instance Court, therefore, there was already some circumstantial evidence that pointed to (among other things) political motives for the extradition request, but the Higher Land Court of Vienna countered them at the time with admissible contrary considerations and circumstantial evidence and did not consider Firtash's extradition inadmissible due to their preponderance.

The new circumstances and evidence now presented, which, contrary to the opinion of the trial court, did not end with a mere repetition of the circumstances already considered, but contain, in addition to deepening evidence, also specific actions and statements by the United States and, in particular, by Victoria Nuland concerning the applicant of the complaint during the relevant period, fitting into an even broader picture of the economic and especially political weight of the applicant of the complaint before, during and also after the sending of the extradition request, are presented in their juxtaposition

It remains to be seen in the renewed case whether the new circumstances and evidence considered as significant will also be sufficient to truly justify the existence of an obstacle to extradition under Part 3, Article 4 of the Extradition Treaty with the United States. In the new trial it will be necessary, in particular after the examination of witnesses Nalyvaychenko,

Klyuyev, Shokin, Sivkovych, Zavorotny and Kolomoisky, to conduct a comprehensive assessment of the evidence in conjunction with the already available means of proof.

In view of the fact that the reopening of the proceedings has already been allowed for reasons relating to the issue of the possible political instrumentalization of the extradition request and the facts and evidence newly adduced, it now seems unnecessary to examine in detail the other extensive arguments in the complaint concerning the alleged violations of human rights and fundamental freedoms as an obstacle to extradition under Article 19(1) of the Extradition and legal assistance", especially Art. 3 ECHR and in this regard, according to the arguments, the Annexes never taken into account, such as Annex ./18 to Document No. 235, Annex ./12 to the application to reopen the proceedings, Annex ./17 to Document No. 235 and Annex ./5 and ./12, ./13, ./14, ./15, ./16, the withdrawal of September 15, 2020 (Document No. 249) when other Annexes are produced in the course of the complaint, Art. 6 ECHR and Art. 8 ECHR, which are also invoked by the recently submitted procedural document in the appeal proceedings in conjunction with Art. 7 of the Charter of Fundamental Rights of the European Union, Art. 47 of the Charter under Art. 10 of EU Directive 2016/343, Art. 19 of the Charter in conjunction with Art. 47(1) and (2) of the Charter, since the arguments cited for obstacles to extradition under Art. 19 of the Extradition and Legal Assistance Act are accordingly subject to review at the time of the decision on the extradition request and will therefore in any event be tested anew (cf. Göth-Flemmich/Riffel in Höpfel/Ratz, Vienna Commentary, 2nd edition, on Art. 19 of the Extradition and Legal Assistance Act, para. 2).

The ruling of the court of first instance is set aside, the motion to reopen the extradition proceedings is granted, and pursuant to Article 9(1) of the Extradition on Legal Assistance Act, in conjunction with Article 358(1) of the Code of Criminal Procedure, the previous ruling of the Vienna Higher Land Court (and in logical sequence the ruling of the court of first instance that preceded it, cf. Article 358(2) of the Code of Criminal Procedure) is deemed to have been set aside.

In further proceedings it will be necessary to draw attention to the fact that the trial court has not yet independently considered the question of the possible immunity of the affected person and the suspension of the extradition proceedings based on it, but only in the course of summarizing the results of the proceedings referred to the opinion of the Federal Ministry of Justice received pursuant to section 57 of the Extradition and Legal Assistance Act (page 8 of the complaint), which, without detailed substantiation, denied the existence of privileges and immunities of the affected person and would not provide further details in this regard even to the trial court's request (Document No. 275).

It will be necessary to take into account that this opinion, although it must be obtained in accordance with Article 57 of the Law on Extradition and Legal Assistance, is not binding in view of the constitutional principle of separation of judicial and executive powers (Article 94 of the Constitution), and the existence of possible immunity must be established by the court itself (cf. legal information system RIS-Justiz RS0114977).

In resumed extradition proceedings, the court of first instance should - after a second attempt to obtain a reasoned opinion under article 57 of the Regulation on Extradition and Legal Assistance - make an ongoing independent inquiry as to the existence of a possible immunity for the person concerned and, depending on the result, continue the extradition proceedings or suspend them while the procedural obstacle to prosecution continues to exist.

Higher Land Court Vienna 1011
Vienna, Schmerlingplatz 11
Dept. 22, June 14, 2023

Mag. Erika Pasching electronic copy according to Art. 79 of the Act "On the organization of the courts."

Explanation of the procedure for appeal: This judgment is not subject to further review
(part 1 of article 9 of the Law on Extradition and Legal Assistance in conjunction with part 6 of article 89 of the Code of Criminal Procedure)