DISSEMINATED BY DAVIS, GOLDBERG & GALPER PLLC, A REGISTERED FOREIGN AGENT, ON BEHALF OF DMITRY FIRTASH. MORE INFORMATION IS ON FILE WITH THE DEPT OF JUSTICE, WASHINGTON DC.

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Statements by Lanny J. Davis - Davis Goldberg Galper and Dan Webb, Winston & Strawn about Davis re-engagement by Dymtro Firtash as legal counsel

"I am pleased to rejoin the legal defense team led by Dan Webb of Winston & Strawn to prove that Mr. Firtash is innocent of the charges filed against him by U.S. prosecutors in Chicago. I hope that the Chicago federal prosecutors and U.S. Department of Justice in Washington, D.C. will re-evaluate the case as I believe it will be determined that there are no facts to support any of the charges against Mr. Firtash."

--Lanny J. Davis, partner, Davis Goldberg & Galper, PLLC

"We appreciate Lanny Davis re-joining our legal team. We have long believed, based on the facts and the law, that the indictment lacks sufficient alleged facts supporting any criminal offense by Mr. Firtash and Mr. Davis will assist us in correcting the public record in media reports that suggest otherwise."

--Dan Webb, lead Firtash defense counsel, Winston & Strawn

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Background facts: Not for attribution

--Lanny Davis of the Washington DC law firm, Davis Goldberg Galper PLLC represented Mr. Firtash as co-defense counsel with former Chicago US Attorney, Dan Webb, chairman of Winston & Strawn, from 2014-July 20, 2019, when Mr. Davis de-registered under FARA.

--On April 18, 2021, Davis filed his registration electronically with the US Department of Justice under the Foreign Agents Registration Act (FARA) His firm "engagement agreement" to represent Mr. Firtash as co-defense counsel became effective on April 12, 2021.

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--Description of Davis' / DGG's legal services to Mr. Firtash contained in FARA report filed April 18, 2021

Exhibit B

3. Describe fully the nature and method of performance of the above indicated agreement or understanding.

Please see attached contract. Registrant has been engaged to provide legal services, legal representation in ongoing matters, including working with U.S. and European Co-Defense Counsel, on strategies and services in support of legal and litigation positions. At times, these services may include correcting the record in the media and elsewhere in the face of distortions and inaccuracies and advising on such media strategies for such purposes.

--The fees in the DGG engagement letter, also filed and disclosed in the FARA registration statement, to be paid the Davis Goldberg Galper are $75,000 per month for the first three months; and then $50,000/month thereafter unless changes are made that are mutually acceptable.

<u>Past representation</u>

--The attorneys who succeeded Mr. Davis's first representation in July 2019 were Joseph diGenova and Victoria Toensing.

--The Washington Post reported that in "late August" 2019 they met with AG Barr to ask that the charges against Mr. Firtash be dropped. AG Barr instead referred them to the US Attorney in Chicago, where the original indictment occurred.

--Mr. diGenova and Ms. Toensing no longer represent Mr. Firtash.

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April 30, 2021 Statement by U.S. Defense Attorneys for Dmytro Firtash Denying Any Contacts or Involvement with Rudy Giuliani

"To reiterate what Mr. Firtash has previously stated regarding any involvement in Mr. Giuliani or anyone else's efforts in the U.S. political arena: Mr. Firtash has previously stated that he had no information about the Bidens and had not financed the search for it. Mr. Firtash never authorized anyone on his behalf to have any involvement in an investigation about the Bidens in the Ukraine. He has said that he was 'sucked into' this internal U.S. fight without his will and desire. He did not provide any 'dirt-digging efforts.' Doing so might have helped Mr. Giuliani, he said, but it would not have helped him with his legal problems. Mr. Firtash reiterates that did not have any information, did not collect any information, and did not finance anyone who would collect that information."

– Dan Webb, former Chicago U.S. Attorney, and Lanny J. Davis, former Special Counsel to President Clinton and former advisor to President George W. Bush, Privacy and Civil Liberties Oversight Board

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Statement by Anthony Fisher
May 13, 2021

"The only occasion on which I have met Rudy Giuliani was at the Anatevka charity event in London in late June at which Mayor Giuliani was the guest of honor. I attended along with many other guests at the personal invitation of Rabbi Azman whom I have known for over 10 years and who hosted the event."

"I did not attend or otherwise participate in the side meeting that Mr Giuliani had at the hotel prior to the charity event and I was wholly unaware that the meeting was taking place."

"I have had no meetings nor have I had any contact with Mr Guliani outside of our encounter at the London Anatevka event and I did not attend any meetings with Mr Giuliani in Washington."

"I have never discussed Mr Firtash with Mr Giuliani and I have never handed over or forwarded any documents to him."

"Any reporting suggesting that I attended such meetings is incorrect."

--Anthony Fisher, head of a London-based consultancy that has worked for Group DF as a client for many years

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May 24, 2021

Additional questions from Times reporters before factual corrections of what Davis said or didn't say:

1) As discussed, you had offered to clarify with Mr. Gorbunenko and Mr. Dietrich what Mr. Giuliani said during their June 2019 meeting at the London hotel when they discussed Mr. Firtash's extradition matter. We are not asking for exact quotes, but generally, what did Mr. Giuliani say during this meeting? What did he say he might be able to do for Mr. Firtash?

2) Did Mr. Gorbunenko and Mr. Dietrich meet with Mr. Giuliani on June 29 or June 30, 2019?

3) Who else was present at this meeting?

4) What was the purpose of Mr. Fisher's July 2019 trip to Washington? You indicated that Mr. Firtash sent Mr. Fisher to Washington to convince Ms. Toensing to take Mr. Firtash's case, but Ms. Toensing and Mr. Firtash had already signed a retainer agreement by that point.

5) What were the exact dates of Mr. Fisher's July 2019 trip to Washington?

6) Was anyone else present at Mr. Fisher's meetings with Ms. Toensing besides Mr. diGenova? Was he involved in Mr. Firtash's case in any other way either prior to these meetings with Ms. Toensing, or subsequently? If so, how?

7) What was the exact date that Mr. Firtash signed Ms. Toensing's retainer agreement, and/or what was the exact date that their attorney-client relationship began? Precisely when did it end?

8) Your response about Mr. Isenegger's $84,545 wire transfer has raised two substantial and significant questions/concerns:

A) You indicated during our call on Thursday that Mr. Isenegger paid $84,545 to the travel agent without any involvement or reimbursement from the DF Group or its employees. Further, you indicated that Ms. Strasser was only involved in arranging Mr. Isenegger's payment to the travel agent as a friendly favor to Mr. Isenegger. As discussed, we have documents and other reporting that contradict those assertions.

Please verify exactly what you want to say about that payment. If you decide to stick with the current claim that Mr. Isenegger made the payment without any involvement or reimbursement from the DF Group, please make that statement on the record if you want it included in the article.

B) We also do not understand the rationale that Mr. Isenegger, and he alone, made this $84,545 payment because he was pursuing an LNG deal with Mr. Parnas. First, Mr. Giuliani had nothing to do with that LNG deal, so why would Mr. Isenegger pay for Mr. Giuliani's expenses? Secondly, as you previously stated to us, and as Mr. Firtash stated to our colleagues in this article published in November 2019, it was Mr. Firtash who was pursuing the LNG deal with Mr. Parnas, not Mr. Isenegger alone. (See "The oligarch, a major player in the Ukrainian gas market, said Mr. Parnas and Mr. Fruman initially pitched him on a deal to sell American liquefied natural gas to Ukraine, via a terminal in Poland. While the deal didn't make sense financially, he said, ***he entertained it for a time, even paying for the men's travel expenses***, because they

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had something else to offer.") As you may know, Mr. Fruman was also involved in the LNG deal with Mr. Parnas. Do you have any documents that support the contention that Mr. Isenegger was involved in an LNG deal with Mr. Parnas and/or Mr. Fruman?

9) Our reporting shows that during a meeting in Vienna on or about July 20, 2019, Joseph diGenova and Victoria Toensing raised Andrew Weissman and an offer to assist in Mr. Firtash's DOJ case in exchange for cooperation with the special counsel's investigation. Please let us know if you have any comment on that. (Again, the NYT does not believe that Mr. Weissman did anything improper. We are simply relaying what was claimed by Ms. Toensing and Mr. diGenova).

10) Regarding the phone call between Mr. Giuliani and Mr. Webb, we have two remaining issues to iron out:

A) Your most recent statement said it occurred in July 2019. The aforementioned New York Times article published in November 2019 stated that the conversation took place in early June 2019. What was the exact date of the call? Was there only one call and/or other communication between Mr. Webb and Mr. Giuliani? Were there text messages or emails between Mr. Webb and Mr. Giuliani that may ultimately be produced in connection with the November 2019 search of Mr. Giuliani's iCloud account or the search last month of his devices?

B) Your statement said that "During that brief call, they talked generally about the Firtash case." That same NYT article from November 2019 stated that "Mr. Giuliani wanted Mr. Firtash's help," and that Mr. Webb "largely rebuffed" him. What specifically did Mr. Giuliani want Mr. Firtash's help on, and how did Mr. Webb largely rebuff him? What specifically did Mr. Giuliani offer to do for Mr. Firtash? If the NYT article was inaccurate, please explain what specifically is inaccurate and why no one has sought to correct it in the 18 months since it was published.

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Ukraine Can Be a Battlefield or a Field of Opportunity - It's the US and Russia's Choice

Both Messrs. Biden and Putin should Ukraine's historic role right to be independent, strong, and the "Switzerland" of Central Europe

On the eve of the June 13 summit between Presidents Biden and Putin, far be it for me to offer any advice to either leader. But I can offer some observations based on my lifelong commitment to a strong and independent Ukraine and a civil society with strong commitments to anti-corruption and democratic principles. In 2014, the Kyiv Post published my op Ed with these themes and I hope both leaders keep the headline of that essay in mind as they meet: Ukraine Must Be Strong, Independent, and Neutral.

Ukrainians themselves must lead the way to unite against any form of corruption, whether by wealthy individuals called "oligarchs" or government officials who are complicit in schemes by US and other politicians to use Ukraine for their own partisan political purposes. That occurred in 2016 and 2020 and we in Ukraine cannot allow that to happen again.

Whether Ukraine can prosper as a neutral, self-determined, and enterprising nation or descend into further tensions will largely be determined by the actions of the United States and Russia - two nations that have significant interest in Ukraine's present and future. As US President Joe Biden and Russian President Vladimir Putin meet in Switzerland, we must understand what actions the two nations can take to ensure a strong and neutral Ukrainian and why this is advantageous to all parties.

It is no secret that Ukraine has experienced tremendous hardships over the last decade, as aggression from militant groups loyal to foreign powers have ignited bloody conflicts that remain ongoing in the Donbass and Crimea regions.

The world needs to understand that while Ukraine has always proudly been ethnically and culturally diverse, the Ukrainian people are overwhelmingly united by a sense of national identity and cannot and will not tolerate incursions or invasions that compromise our territorial integrity. On that we are one – and I am thankful for President Zelensky's continuation in his administration of that commitment, across all political and partisan lines in our country.

As deadly and heartbreaking as these conflicts have already been in the eastern provinces for the Ukrainian people, increased foreign aggression could spark a full-blown civil war akin to what we have seen in Syria, with powerful foreign nations vying for power via proxy groups and countless civilians killed and displaced in the process. Both the present reality of the situation and the future potential for escalation is terrifying to me and my millions of compatriots who simply want to live in a peaceful and independent democracy.

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Presidents Biden and Putin both have tremendous power in determining Ukraine's future course and can take the following steps to ensure Ukraine's strength and independence.

The first step would be for the US government to empower Ukraine's distressed military. A strong modern military would discourage further foreign aggression in the region and more easily subdue militant forces in the region, if necessary. A lend-lease agreement between the United States and Ukraine could be a reasonable compromise for the Russian government who undoubtedly oppose any physical US presence in Ukraine but may consider allowing significant material support. In exchange for the critical investments and resources, Ukraine could offer the United States valuable guidance on military, geopolitical, and commercial strategy in the region. Depending on the success of a Ukraine-US partnership, Ukraine could even become a much-needed diplomatic intermediary between the US, the European Union, and Russia. Perhaps the United States' greatest incentive to strengthen Ukraine's military without provoking Russia is to simply ensure stability in the region as the US will undoubtedly have to focus on navigating the pressing threat of China. President Biden must be firm and unwavering in his pursuit of these ends and must approach Putin as a businessman more than a politician.

Despite the amassing of Russian troops on Ukraine's borders and the aggressions of militant forces within the nation, I believe perhaps Ukraine's most important battle is her quest for energy independence. Energy independence is critical to the overall independence and strength of Ukraine, a country that has been forced to exclusively buy gas from Russia's Gazprom since disputes between the neighboring countries in 2005 and 2005. While Ukraine has significant gas resources and infrastructure within its borders, it is not enough to secure energy independence for the massive population. As such, Ukraine's road to energy independence runs through the central Asian nation of Turkmenistan, a country which was Ukraine's principal energy supply partner until the 2005-2006 crisis.

Here's how it would work: Ukraine could acquire a concession to produce gas in Turkmenistan and pay Russia to transit the gas through their pipelines from Turkmenistan to Ukraine, with Ukraine then keeping gas for their own reserves and selling to lucrative European markets. This would create a mutually beneficial partnership, allowing Ukraine to produce gas for its own reserves and for export across Europe, while simultaneously allowing Russia to earn substantial profit from use of Russian pipelines. This system would not only bring energy independence to Ukraine, but "the most economical new source of gas" to European states.

The opening of two long-proposed pipelines - The Nord Stream 2 running under the Baltic Sea from Russia to Germany and the Trans-Caspian Gas Pipeline running from Turkmenistan to Azerbaijan - could be a crucial bargaining chip in a potential gas deal. Construction of these pipelines could reduce tensions between Russia and Ukraine as TCGP would allow Turkmen gas to reach Ukraine and the European Union without passing through Russia, while Nord Stream 2 would allow Gazprom to bypass Ukraine in transporting gas to Europe.

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A deal should be pursued assuring Russia their Nord Stream 2 pipeline in exchange for returning Ukraine's Donbass region, cessation of general Russian militancy across Ukraine, as well as a guarantee for the construction of the TCGP without any Russian interference.

As an expert in the region's gas landscape who has negotiated gas deals with all relevant parties in the past, I would be keen to have a role in these negotiations and fight for the future of Ukriane. My efforts would be greatly aided by support from the US, who could designate the TCGP as a project for support under the European Energy Security and Diversification Act of 2019.

I read President Zelensky's article voicing concern about "oligarchs" and understand he's focused on corruption, and support that focus wholeheartedly. I know he doesn't place stereotypical label son individuals who scratched their way from poverty after the break-up of the Soviet Union to wealth not through corruption but through hard work that has created millions of jobs for Ukrainians. I wish President Zelensky the greatest success in the pursuit of reform, anti-corruption, and democracy, however

Additionally, I hope President Zelensky can see the value of successful Ukrainians for the vast international networks and negotiating experience honest and successful leaders of the Ukraine business community have cultivated and how this could be an asset to Ukrainian diplomacy.

It is time for the world to see Ukraine for what it is and what it can become - Ukraine is Europe's largest nation in size and sixth largest in population, situated at the crossroads of Europe and Asia. Ukraine is also a fertile business ground and center of Eurasian commerce aided by business and capital from both East and West. But most importantly, my home country is a proud unified nation of decent and resilient people seeking peace and autonomy.

If President Biden and President Putin can compromise to ensure the Ukrainian people's vision, my beloved nation can become a transformative global business partner and powerful broker of world peace.

Dmytro Firtash, formerly the head of the Federation of Employers of Ukraine, is currently under indictment by Chicago, Illinois prosecutors for a "scheme" to bribe Indian officials, but no allegation of any bribery and no business or activity in the United States related to the charges. He has repeatedly declared his innocence and the Austrian government initially denied the USG's extradition request on the grounds, still unrefuted, that his arrest was due to "political motivation" by senior policy officials in the U.S.

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The National Security and Defense Council will check the data on 134 citizens of Ukraine who are subject to US sanctions

https://www.dw.com/uk/rnbo-pereviryt-dani-pro-134-hromadian-ukrainy-na-yakykh-nakladeni-sanktsii-ssha/a-57783288

04 June 2021

The National Security and Defense Council will review the grounds on which the United States has imposed restrictions on Ukrainian citizens and, if necessary, make a decision based on the results.

The National Security and Defense Council (NSDC) will review data on Ukrainian citizens against whom the United States has imposed sanctions. As a result, the National Security and Defense Council will make appropriate decisions if necessary, said the Secretary of the National Security and Defense Council Alexei Danilov on Friday, June 4.

According to him, the President of Ukraine Volodymyr Zelensky instructed the National Security and Defense Council to find out which of the citizens of Ukraine are under US sanctions, what kind of citizens they are, and on what basis they were restricted.

"In the United States, there are several institutions that directly impose sanctions on citizens of other countries, one of them - the Ministry of Finance," - said Danilov during a briefing following a meeting of the National Security and Defense Council. According to him, according to the US Treasury Department, there are 130 citizens of Ukraine, data on each of these citizens were officially received from the Ukrainian embassy in Washington. "

The Ministry of Internal Affairs of Ukraine is also checking when exactly the citizens on the list received Ukrainian citizenship and on what grounds, he said.

"In addition, there is a separate list, where there is a certain number of our citizens, namely four who (...) received sanctions from the State Department. In total, 134 Ukrainian citizens are currently under US sanctions," Danilov said.

"We have instructed the Security Service of Ukraine, the Cabinet of Ministers of Ukraine, the Foreign Intelligence Service to check all relevant information about each citizen, on the basis of which US sanctions were applied, to make appropriate decisions if necessary at NSDC meetings," he added.

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The National Security and Defense Council will check 61 Ukrainians subject to US sanctions

https://www.dw.com/uk/rnbo-pereviryt-61-ukraintsia-shchodo-yakykh-diiut-sanktsii-ssha/a-57536634

14 May 2021

Ukraine can impose on its citizens the same restrictions that the United States has imposed on them, said National Security and Defense Council Secretary Oleksiy Danilov.

Secretary of the National Security and Defense Council Oleksiy Danilov (archive photo) does not rule out the application of sanctions against Ukrainians sanctioned in the United States

The National Security and Defense Council (NSDC) of Ukraine will carry out legal verification of 61 Ukrainian citizens against whom the United States has imposed personal sanctions. Based on the results of this inspection, the National Security and Defense Council will make a decision on the introduction of similar sanctions by Ukraine, Secretary of the National Security and Defense Council Oleksiy Danilov said on Friday, May 14.

"We discussed (at a meeting of the National Security and Defense Council. - Ed .) The sanctions imposed on citizens of Ukraine by the United States. We asked them with official documents to give comprehensive answers to each citizen of Ukraine: when and on what basis were those or those sanctions, for reaction here, in the territory of Ukraine, concerning all these persons ", - Danilov reported.

According to him, today it is known for sure about 61 citizens of Ukraine, against whom the United States has imposed sanctions.

US sanctions against Ukrainians

It will be recalled that in early March 2021, the United States imposed sanctions against Ukrainian oligarch Igor Kolomoisky and his family.

In September 2020, the United States imposed sanctions on Andriy Derkach , a non-partisan member of the Verkhovna Rada , who is accused in Washington of interfering in the 2020 US presidential election. Subsequently, in January 2021, the sanctions previously imposed on Derkach were extended to seven more Ukrainians, whom the US Treasury links to this people's deputy . Among them, in particular, were Rada deputy Oleksandr Dubinsky and ex-deputy Oleksandr Onyschenko.

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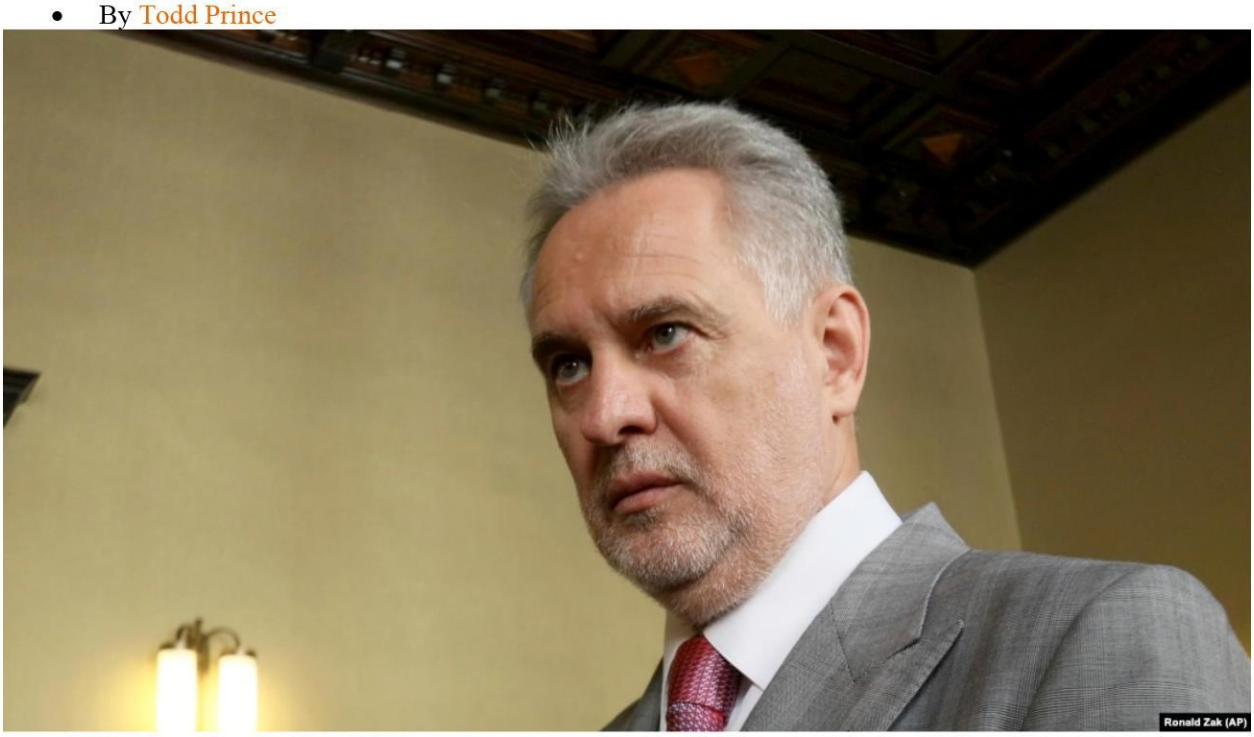
Ukraine Slaps Sanctions On Oligarch Wanted By U.S. Ahead Of President's Trip To Washington (rferl.org)

UKRAINE

Ukraine Slaps Sanctions On Oligarch Wanted By U.S. Ahead Of President's Trip To Washington

June 18, 2021 18:55 GMT

- By Todd Prince



Ukrainian oligarch Dmytro Firtash (file photo)

Ukraine has imposed punitive sanctions on Dmytro Firtash, a powerful tycoon indicted by the United States for corruption, as President Volodymyr Zelenskiy widens his crackdown against influential elites ahead of his first official visit to Washington next month.

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National Security and Defense Council Secretary Oleksiy Danylov on June 18 announced the sanctions against Firtash, who is currently living in Vienna while fighting extradition to the United States.

In announcing the sanctions, Danylov accused Firtash of selling titanium to Russia's defense industry. Kyiv is engaged in a war against Kremlin-backed separatists in eastern Ukraine that has left more than 13,000 people dead since 2014.

Ukraine's security chief also announced sanctions on businessman Pavel Fuchs over his acquisition of more than a dozen natural-gas fields from a former official tied to the government of former President Viktor Yanukovych, who was ousted in a popular uprising in 2014.

Firtash and Fuchs have been linked to former President Donald Trump's personal attorney, Rudy Giuliani, who sought dirt in Ukraine on President Joe Biden's son, Hunter.

Zelenskiy will meet Biden for the first time in Washington in July.

Danylov did not give details about the sanctions, although they historically freeze an individual's assets inside Ukraine, including bank accounts.

Firtash controls key businesses in Ukraine's chemical, titanium, and natural-gas industries. Forbes this year listed him as the country's 25th-wealthiest individual, with a net worth of $420 million.

The United States indicted Firtash, who is believed to have strong ties to the Kremlin, in March 2014, shortly after Russia seized Ukraine's Crimean Peninsula.

U.S. prosecutors accuse the Ukrainian businessmen of paying bribes to officials in India for licenses to mine titanium, which they planned to sell to U.S. aerospace giant Boeing.

Firtash denies the charges and calls them politically motivated. He is currently seeking a new trial after Austria's Supreme Court upheld his extradition in 2019.

Although he has lived in Austria since 2014, Firtash has continued to prosper financially in Ukraine. He is believed to control around 75 percent of the country's gas-supply companies.

Yuriy Vitrenko, the CEO of the state-owned natural gas company Naftogaz, told RFE/RL earlier this month that he suspected Firtash might be shifting his profits from Ukraine's gas industry to affiliated companies in Western Europe through a scheme known as transfer pricing.

He also expressed concern that Firtash was selling gas he bought at below-market prices from Naftogaz to industrial users in violation of an agreement.

'Hold Them To Account'

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George Kent, the deputy U.S. assistant secretary of state who oversees Ukraine, called on Kyiv in April to go after Firtash as part of its anti-corruption agenda.

Kent highlighted Firtash's role as an importer in the 1990s and 2000s of gas from Russia, a business that many officials and analysts have said was rife with graft.

"Why is it that it is the U.S. who indicts and goes after corrupt Ukrainians?" Kent said, referring to the U.S. indictment against Firtash.

"It's time for the Ukrainian leadership and the justice system -- rather than not making decisions against corrupt oligarchs -- to use Ukrainian institutions to go after corrupt Ukrainians and hold them to account," he said.

The Biden administration has made Kyiv's progress on reforms, including fighting corruption, a greater priority in the two countries' relationship.

U.S. officials and analysts have expressed concern about a rollback of Ukraine's reform agenda over the past year, including the dismantling of anti-corruption legislation.

Biden stressed the need for Ukraine to push ahead with tough economic and political changes as well as tackle corruption in a phone call with Zelenskiy on June 7. During the call, Biden extended an invitation to the Ukrainian leader to visit the White House this summer.

SEE ALSO: Biden Invites Ukrainian President To White House

When asked a day later by Senator Chris Murphy (Democrat-Connecticut) during a Foreign Relations Committee hearing if there were any reforms that the Biden administration wanted to see Ukraine deliver prior to Zelenskiy's White House visit, Secretary of State Antony Blinken cited several, including a desire to see "people engaged in corrupt practices brought to justice."

In an op-ed posted on the website of the Atlantic Council, a Washington-based think tank, Zelenskiy said his administration would be taking steps to rein in the power of tycoons like Firtash who wield great influence on Ukraine from behind the scenes.

Ukrainian and Western experts blame the tycoons for blocking crucial economic and political reforms that could put the country on a path toward greater prosperity and European integration. They have called for them to be investigated by an independent judiciary amid concern Zelenskiy's use of sanctions could become a substitute to proper legal institutions.

SEE ALSO: A Powerful Kremlin Ally Faces A Treason Trial In Ukraine. Ukraine's President Faces A Political Trip Wire.

Zelenskiy's administration in February placed sanctions on Viktor Medvedchuk, a powerful tycoon and politician close to Russian President Vladimir Putin, for allegedly helping the separatists in eastern Ukraine.

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Lanny Davis, Esq.

1120 20th St. NW, Suite 700 North
Washington, D.C. 20036
U.S.A.

BY EMAIL: ldavis@dggpllc.com

June 23, 2021

Re: Dmytro Firtash
Congressional letter to Secretary of State Antony Blinken and Attorney General Merrick Garland from Marcy Kaptur, Mike Quigley, Brian Fitzpatrick, and Andy Harris

Dear Mr. Davis:

I noted with regret the reference in a letter written by members of congress to "corruption" in the judicial system in Austria regarding the Firtash extradition case.

Please remind the US members of congress of the following:

1) Austrian is a democracy and operates with the same rules of transparency and due process of law as the United States of America.

2) the only due process that has yet occurred in the Firtash case over all these years of unsubstantiated and false accusations occurred in an Austrian courtroom on April 30, 2015. This extensive court hearing over a full day of reviewing "evidence" submitted by the by the government (representing the USG's views that Mr. Firtash should be extradited) and Mr. Firtash's defense and the interrogation of six witnesses, resulted in a judicial written decision, over 300 pages in length, denying extradition. The letter by the members of congress ignored this.

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To suggest corruption in Austrian courts, therefore, is not only factually inaccurate – it is an insult to our judicial system.

I ask that you ask the US members of congress to correct this inaccurate charge and to withdraw it.

Sincerely,

DIETRICH Rechtsanwalts GmbH
Otto Dietrich

Attorney for Mr. Firtash

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Davis | Goldberg | Galper PLLC

June 23, 2021

BY EMAIL

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271 Cannon House Office Building
Washington, DC 20515
Joseph Knowles (Chief of Staff for Brian Fitzpatrick): joseph.knowles@mail.house.gov

Re: Response to Letter from the Congressional Ukraine Caucus Concerning Dmytro Firtash

Dear Honorable Representatives:

I am an attorney for Ukrainian businessman Dmytro Firtash, and I am responding to the June 22, 2021 letter your offices wrote to Secretary of State Antony Blinken and Attorney General Merrick Garland about Mr. Firtash. As my colleague Dan Webb, highly respected former Chicago U.S. Attorney, and I have already stated: we have long believed, based on the facts and the law, that the indictment against Mr. Firtash lacks sufficient alleged facts supporting any criminal offense by Mr. Firtash.

I am someone you probably know has been involved for many years in support of fact-reporting, which is the opposite of innuendo-without-fact reporting, and for many years active in support of due process of law and the presumption of innocence under our Constitution. I am certain the four of you are as well.

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My opening request is that you test that standard of fact-based assertions against the standard your letter to Secretary Blinken and Attorney General Garland used, which was to cite to Internet stories that are all innuendo and no facts. So while I appreciate that you took the effort to find citations online, that does not make them fact. The four of you know this better than most, since you must have been subject, at one point or another, to innuendo journalism about yourselves that lacked facts to support it. We were not sent a copy of the above-referenced letter but called a reporter who had acopy and he sent it to us. In the future, sending a copy to the person you are accusing ahead of time to give him or her an opportunity to reply or at least posting the letter online would be, respectfully, a fairer approach.

I am attaching a copy of a reply from Mr. Firtash's Austrian lawyer to your assertion of corruption in the Austrian justice system underlying the Austrian delay in agreeing to the extradition of Mr. Firtash. I hope you will read this reply and understand that Austria's transparent commitment to due process was demonstrated in Mr. Firtash's extradition hearing – and, so far, nowhere else. I attended that hearing on April 30, 2015, and I can assure you that under the law and the facts, Judge Bauer's over 180 page decision ruling against the U.S. government's extradition request was based on due process, on the facts, and on the words of the U.S. - Austria extradition treaty.

Yet your letter accuses our client of corrupting and subverting the Austrian legal system through his "considerable wealth and malign influence." Such a statement is both completely false and an insult to a fellow western democracy's legal system and rule of law. Your letter does not reference any evidence you have for this extraordinary claim, and the facts of Mr. Firtash's indictment and subsequent extradition proceedings prove the opposite.

As you will note from the Austrian attorney letter, Austria is a democracy and operates with the same rules of transparency and due process of law as the United States of America. In fact, the only due process that has yet occurred in Mr. Firtash's case over all these years of unsubstantiated and false accusations occurred in an Austrian courtroom on April 30, 2015.

We ask that you correct this inaccurate charge about Austria's legal system and withdraw it. We also ask that you members of the U.S. government, which cherishes and preaches our own robust system of due process, rule of law, and the presumption of innocence, apply these principles in practice. Mr. Firtash denies all your inaccurate and non-fact-based allegations in your letter about his ever having done anything illegal or corrupt.

I am copying this letter to Secretary Blinken and Attorney General Garland so that they will know that the assertions made in your letter, despite the multiple citations to false reports that probably were a result of Google searches by your staff, are just as or more inaccurate. Your math teacher taught you that no matter how high the number, if you multiply it by zero the answer is still zero. So it goes with repeated false assertions on the

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Internet, even among mainstream media. If those reports are not based on facts and the truth, repeated false reporting doesn't make them any more true.

We are confident that upon learning the facts surrounding Mr. Firtash's charges, indictment, and attempted extradition, you will agree that the presumption of innocence should apply. We ask that you resist the temptation, which is shared by many in the media, to promote evidence-free innuendo and instead let our trusted principles of due process and rule of law run their course.

Especially to the Honorable Rep. Kaptur, whom I have admired and supported for many years: Please let me know if you would speak to me on the telephone on the overall issue of Ukraine, as well as about Mr. Firtash. On the eve of President Zelensky's visit to President Biden, I hope you will allow me to inform you about Mr. Firtash's true position, for many years, regarding an independent, democratic, and strong Ukraine, free from Russian aggression and occupation and with strong relations with the U.S. My cell number is 202-744-2792. Please ask your staff to call me, if you would be so willing, so that we can make an appointment to talk.

Regards,

Lanny

Lanny J. Davis
Founder and Partner
1120 20th Street NW
Suite 700 North
Washington, D.C. 20036

Dan Webb
Chairman, Winston & Strawn LLB
35 W. Wacker Drive
Chicago Ill 60601

CC: Secretary Antony Blinken
U.S. Department of State
2201 C St NW, Washington, DC 20520

Attorney General Merrick Garland
U.S. Department of Justice
950 Pennsylvania Ave NW, Washington, DC 20530

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Davis | Goldberg | Galper PLLC

July 8, 2021

Mr. Volodymyr Zelensky
President of Ukraine

Re: Dmytro Firtash attorney, Lanny J. Davis, writes letter to Ukrainian President Zelensky Contradicting Factual Basis for Sanctions

Dear President Volodymyr Zelensky,

I know you are scheduled to visit soon with my old friend for over 40 years, now president of the United States, Joe Biden. I hope that in this meeting both presidents will cement an important alliance between two essential democracies that believe in the rule of law, human rights, and an independent and free press.

I also hope, as an attorney for Ukrainian business leader Dmytro Firtash, that you will take the time to review the facts allegedly justifying the sanctions your government imposed on Mr. Firtash and reverse them before your meeting with President Biden. I believe you will do so because you have a worldwide reputation for honoring the facts and the truth. This was demonstrated when you successfully resisted former President Trump's attempted blackmail, making much-needed military aid to Ukraine contingent on your agreeing to disparage President Biden and his son for false and political reasons.

It appears that you were misinformed of the facts by your ministers when your government chose to announce and impose sanctions on Mr. Firtash on June 18, 2021 for allegedly selling titanium products to "Russian military enterprises." This charge is utterly, 100% false, and we can prove it. We even said so in a public statement to the world's media, but regardless, here are some examples of the headlines that resulted from these false accusations leading to baseless sanctions:

- Reuters: Ukraine sanctions tycoon Firtash for business links to Russian defense firms
- Radio Free Europe: Ukraine Hits Oligarch Firtash, Dozens Of Others With Sanctions
- Atlantic Council: Ukraine's Russia sanctions target Putin's inner circle
- Mother Jones: Rudy Giuliani's Ukrainian Friends Keep Getting Sanctioned

These examples, along with the others not included, exemplify a tendency in the media to headline accusations and innuendo that are fact-free, but then when facts are given to rebut them beyond dispute, the actual correction of the public record with facts is virtually ignored.

When I issued another statement on June 30 to all the same U.S. and European outlets that were responsible for such false headlines as those above, I got virtually no media coverage. That full statement is included with this letter as Attachment 1.

As you can see, my statement clearly sets forth three documented and undisputable facts rebutting the basis for the sanctions. These facts are:

- Mr. Firtash has *never* sold any titanium products, whether finished or raw materials, to any Russian "military enterprise."

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- Ukraine's own state-owned titanium raw materials mining company, called United Mining Chemical Company (UMCC), *is currently supplying titanium raw materials to the Russian company VSMPO-AVISMA*, the world's largest titanium producer.
- Mr. Firtash stopped supplying titanium raw materials to VSMPO-AVISMA *in 2014*.

In other words, the Ukrainian government has sanctioned Mr. Firtash for allegedly selling titanium products to Russian military enterprises, *when he has never done so*, and yet failed to disclose that it is currently selling titanium raw materials to the Russian company, VSMPO-AVISMA.

This is likely the first time you are reading these three facts because as I said, very few media outlets published my statement with the facts to support Firtash's denial of the charges. As a result, Mr. Firtash can expect that the completely false accusation that he sells titanium to the Russian military will forever live on in the internet, being constantly repeated and republished in every subsequent article about Mr. Firtash.

We know this will happen because we have already seen it many times. Despite Mr. Firtash's strong, fact-based denials, the innuendo-based claims that Mr. Firtash is "linked" to President Putin or Russian organized crime still find their way into almost every article about Mr. Firtash.

There are so many other examples of media reporting on Mr. Firtash that has all innuendo and no facts – and that begins with the reporting on the indictment against him by Chicago prosecutors. Put aside that the indictment is factually baseless, the prosecutors never actually alleged that any bribe was paid by Mr. Firtash. Yet almost every media report says that he is accused of paying a "bribe."

President Zelensky: You are a great leader of a proud and historic democracy. I know you were misinformed as to the true, indisputable facts regarding my client, so I am asking you to do the right thing and rescind these unmerited sanctions against Mr. Firtash. He agrees with you that Ukraine should be strong, independent, and neutral. I hope you will take the time to review the op-ed Mr. Firtash wrote on May 21, 2014 on this very subject, which is included as Attachment 2.

I also wish you, personally, the very best for your important leadership in Ukraine and hope that relations with the U.S. and Ukraine can be further strengthened in the days and years ahead. Please don't hesitate to contact me if you have any questions at all.

Sincerely,

Lanny J. Davis, Attorney for Dmytro Firtash

Lanny J. Davis

Lanny J. Davis
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202-744-2792

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ATTACHMENT 1

FOR IMMEDIATE RELEASE:
Wednesday, June 30, 2021

LANNY DAVIS AVAILABLE FOR MEDIA INTERVIEWS TO CORRECT THE RECORD CREATED BY UKRAINIAN FALSE ACCUSATIONS

LANNY J. DAVIS, ATTORNEY FOR DMYTRO FIRTASH IN US, DENIES *ANY FACTUAL BASIS WHATSOEVER* FOR UKRAINIAN SANCTIONS REGARDING ALLEGED TITANIUM PRODUCTS SALES

For further information contact:
Eleanor McManus
emcmanus@dggpllc.com
- +1-202-460-1451

Alex Lange
alange@dggpllc.com
- +1-202-480-4309

Washington DC - Lanny J. Davis, attorney for Dmytro Firtash in U.S., denies *any factual basis whatsoever* for Ukrainian sanctions regarding alleged titanium products sales

Cites ironic fact, *not disclosed by Ukraine government*, that its own state-owned company is selling titanium raw materials to Russian company, VSMPO-AVISMA, the world's largest titanium producer

Lanny J. Davis issued a global media statement, calling on all media to correct the record based on false accusations by the Ukrainian government on the Firtash sanctions:

"On June 18, 2021, the Ukraine Secretary of the National Security and Defense Council, announced sanctions against Dmytro Firtash based on alleged sales of titanium products by Mr. Firtash to 'Russian military enterprises.' The basis of these sanctions is utterly false. Mr. Firtash has made no such sales.

Moreover, not only did the Ukrainian government get its facts wrong, but it failed to disclose an important and ironic fact when it announced its baseless sanctions against Mr. Firtash: Specifically, Ukraine's own state-owned ilmenite mining company, called United Mining Chemical Company (UMCC), is currently supplying titanium raw materials to VSMPO-AVISMA, the world's largest titanium producer, a practice which Mr. Firtash halted in 2014.

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In other words, the Ukrainian government has sanctioned Mr. Firtash for allegedly selling titanium products to Russian military enterprises, when he has never done so, and yet failed to disclose that it is currently selling titanium raw materials to the Russian company, VSMPO-AVISMA, the largest titanium producer in the world.

# # # #

Background facts:

- **Over the years, Mr. Firtash has owned or operated a number of plants and facilities in Ukraine that produce the raw material ilmenite and titanium sponge, the materials used to create finished titanium metal products found in airplanes, medical devices, and elsewhere.**

- **The Russian company, VSMPO-AVISMA, has a virtual monopoly on titanium metal production and sales in Russia. It purchases Ukrainian titanium raw materials to supply titanium to Boeing, Airbus, the Russian government, including presumably the Russian defense ministry, and others.**

- **However, Mr. Firtash has not supplied titanium raw materials or titanium to VSMPO-AVISMA since 2014.**

-

- **The ilmenite mining site now run by UMCC was leased by Mr. Firtash's Group DF until 2014. In 2014, the Ukrainian government terminated the lease agreement and transferred it to the state-owned company UMCC.**

- **The only titanium sponge plant in Ukraine, 51% of which is owned by the Ukrainian government, with Mr. Firtash owning the rest, has not supplied titanium sponge to VSMPO-AVISMA since 2014. VSMPO-AVISMA has its own titanium sponge production facilities.**

DISSEMINATED BY DAVIS, GOLDBERG & GALPER PLLC, A REGISTERED FOREIGN AGENT, ON BEHALF OF DMITRY FIRTASH. MORE INFORMATION IS ON FILE WITH THE DEPT OF JUSTICE, WASHINGTON DC.

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ATTACHMENT 2

Dmytro Firtash: Ukraine must be strong, independent and neutral

Published May 21, 2014 in *The Kyiv Post*
https://www.kyivpost.com/article/opinion/op-ed/dmytro-firtash-ukraine-must-be-strong-independent-and-neutral-348768.html

Since the ninth century, Ukraine was the center of one of the great world trade routes passing connecting Europe, Asia and the Middle East and served as an intercultural bridge for peoples and entire civilizations.

This is why, today, the people of Ukraine speak different languages, and follow different religions. About three-quarters of our people, primarily in the west, are, like me, ethnic Ukrainian. About one-fifth of the population, primarily in the east, is ethnic Russian and has family and cultural ties to Russia. There are also Byelorussians, Moldovans, Poles, Jews, Tatars, Bulgarians, Hungarians and many other ethnic groups living in Ukraine.

While we may speak in different languages and have different cultural traditions, we are all Ukrainians. Ukraine is a common home for peoples with various ethnic, national, and linguistic roots, but with a common national identity. This has been the case with America, Russia and the countries of Europe. We can respect and encourage autonomy and the preservation of historical ties and languages in the regions of Ukraine, but nevertheless still be one country and one nation.

About 500 million people live in the European Union, to the West of Ukraine. To the East lies Russia, a nation of 140 million people. Ukraine is not just a point on the map. Ukraine is, by territory, the largest country in Europe and by population the sixth largest, with a population of more than 45 million people. This is why we ask that the West and East look at us not through their own eyes, but through our eyes and to understand what is best for us and our country.

I believe it serves no nation's interest, either European, or American, or Russian, and certainly not that of Ukraine, if events in our country lead to a tragic re-play of the Cold War.

We need to be strong economically. We can achieve this by trading with everyone, being open to foreign investors who are attracted by the richness of our natural resources, our free market, our commitment to individual freedom, economic opportunities, and the rule of law. We have well-developed infrastructure – roads, railways and pipelines, many ports on the Black Sea, fertile land, water, minerals, and natural resources. Our most important wealth is our people – highly-educated and hard-working. We are, and should be, seen by the East and West as a neutral crossroads for commerce and economic opportunities open equally for all.

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There should be no national crises or internal conflicts within our country. They are contradictory to our nature and our history. It is essential to allow greater autonomy to our provinces, but the extent and boundaries of this autonomy should be determined by the Ukrainian people and our national government. Our country also needs other nations to respect the national integrity of Ukraine.

I am a businessman. I am not interested in the political views of my business or trading partners. I started as a young man with nothing in the early 1990s, and my country was in a chaotic situation after the collapse of the Soviet Union. Ukraine declared her independence and we started to build a new democratic system of government in very difficult times. We had no national currency and no public institutions to ensure order and stability. For many years, the main problem for most of us Ukrainians has been how to go about finding basic food, shelter, and security for our families and ensure the future of our children.

Now, almost 25 years later, Ukraine is becoming a democratic country and a center for Eurasian commerce. Helped by business partners and private capital from the East and the West, our business has created businesses and enterprises that provide jobs for hundreds of thousands of citizens. We invest all my money in Ukraine, and not in other countries. We believe that Ukraine one day will become an economic powerhouse within Europe, a country with a high standard of living that will successfully cooperate with many countries — if other nations respect our independence and our neutrality.

As a native Ukrainian who loves my country, I wholeheartedly support the holding of presidential elections on May 25. We need to move beyond the crises of the last several months and elect new leadership for the country, which will serve the interests of the Ukrainian people. I hope that the nations of the world, especially Europe, Russia and America, will support these elections taking place without delay.

I believe in a united, independent, and neutral Ukraine. This is not only in the national interest of our great country; it is, without doubt, in the interests of all who want peace and prosperity for all people.

As Abraham Lincoln said in 1864, "The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise — with the occasion. As our case is new, so we must think anew, and act anew. We must disenthrall ourselves, and then we shall save our country."

Dmytro Firtash, a leading businessman in Ukraine, is under indictment by a federal grand jury in the Northern District of Illinois for allegedly committing various U.S. crimes. Firtash states categorically that he is innocent of all charges.

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Dear Mr. Vindman and Mr. Murray,

I am writing regarding your July 7, 2021 piece in lawfare about "weaponized corruption."

https://www.lawfareblog.com/assessing-threat-weaponized-corruption

The below paragraph from that article references our client, Mr. Firtash several times. I have provided a response to each false allegation and have noted where a correction or additional context is needed to provide a fair and balanced article. Please contact me directly with any questions.

> "Such abuse of the Western rule of law-based system also extends to the United States. In but one example, as part of the inglorious Rudy Giuliani saga in Ukraine, former President Trump's personal attorney met with Dmytro Firtash and allegedly offered legal aid to help prevent Firtash's extradition to the U.S. from Vienna on corruption charges in exchange for compromising materials on the Biden family. At the time, Firtash changed his legal representation to the husband-and-wife team of Joseph diGenova and Victoria Toensing, both well-known lawyers in conservative circles and associates of Giuliani. Firtash has long been accused of acting as a gray cardinal for Russia in Ukraine while maintaining close ties with organized crime organizations and the Kremlin."

Our responses to these references can be found below:

"Such abuse of the Western rule of law-based system also extends to the United States. In but one example, as part of the inglorious Rudy Giuliani saga in Ukraine, former President Trump's personal attorney met with Dmytro Firtash and allegedly offered legal aid to help prevent Firtash's extradition to the U.S. from Vienna on corruption charges in exchange for compromising materials on the Biden family."

- This is 100% false. The article presents it as a fact that Mr. Firtash met with Giuliani and then allegedly arranged some sort of quid pro quo. As a source, the article links back to *another* article that only says Mr. Firtash *reportedly* met with Giuliani. What's missing is any reference whatsoever of Mr. Firtash's strong, on the record denial of this allegation. This entire sentence should be removed as its allegations have no factual support behind them. However, if the sentence remains, it should be changed to the following (changes in red):
    - "In but one example, as part of the inglorious Rudy Giuliani saga in Ukraine, former President Trump's personal attorney is alleged to have met with Dmytro Firtash and allegedly offered legal aid to help prevent Firtash's extradition to the U.S. from Vienna on corruption charges in exchange for compromising materials on the Biden family. This allegation has been strongly denied by Mr. Firtash, who previously issued the following statement on this matter through his U.S. based attorneys, former Chicago U.S. Attorney Dan Webb and former Presidential Special Counsel Lanny J. Davis:

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'To reiterate what Mr. Firtash has previously stated regarding any involvement in Mr. Giuliani or anyone else's efforts in the U.S. political arena: Mr. Firtash has previously stated that he had no information about the Bidens and had not financed the search for it. Mr. Firtash never authorized anyone on his behalf to have any involvement in an investigation about the Bidens in the Ukraine. He has said that he was 'sucked into' this internal U.S. fight without his will and desire. He did not provide any 'dirt-digging efforts.' Doing so might have helped Mr. Giuliani, he said, but it would not have helped him with his legal problems. Mr. Firtash reiterates that did not have any information, did not collect any information, and did not finance anyone who would collect that information.'"

"Firtash has long been accused of acting as a gray cardinal for Russia in Ukraine while maintaining close ties with organized crime organizations and the Kremlin."

- This is 100% false. Again, as the support for this fact-free accusation that Mr. Firtash is connected to organized crime, your article merely links to another article that makes the same accusation without any evidence. Where is the evidence that Mr. Firtash "maintains close ties" to organized crime? At least the linked article includes Mr. Firtash's denial of such an outrageous claim. Your article merely repeats the accusation with no chance to deny. The entire sentence should be removed as it is based on a false premise, but if it remains, it should be amended to read:
    - "Firtash has long been accused of acting as a gray cardinal for Russia in Ukraine while maintaining close ties with organized crime organizations and the Kremlin. Mr. Firtash firmly denies this accusation and has previously said the following about the alleged connections to alleged Russian organized crime leader Semion Mogilevich:

      'Mr. Firtash has never stated, to anyone, at any time, that he needed or received permission from Mr. Mogilevich to establish any of his businesses. Moreover, Mr. Firtash has stated many times, publicly, privately and on the record that he knew Mr. Mogilevich but has never had any partnership or other commercial association with him.'"

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[provided: 09.10.2015 11:20]

1082 Vienna ,
Landesgerichtsstrafle 11 Tel.: +43 (0)1 40127-4045

Regional Criminal Court Vienna

Please quote the following reference number in all entries:

313 HR 62/13 g

The investigating judge of the Regional Criminal Court Vienna m the extradition case for prosecution in the United States of America of the Ukrainian national Dmitry FIRTASH, born on 2 May 1965 m Ternobiliska, on 30 April 2015

In the presence of VB Markus DURNBERGER
As secretary,

the public prosecutor Prosecutor Mag. Patricia FRANK, the person affected Dmitry FIRTASH, and his defence counsel

RA Dr. Dieter BOHMDORFER
RA Mag. Rudiger SCHENDER
RA Dr. Christian HAUSMANINGER
RA Mag. Peter KUHN
RA Dr. Otto DIETRICH

Drew up the following

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J U D G E M E N T

During the public extradition hearing on the same date

I./

The extradition of Dmitry FIRTASH, born 2 May 1965 m Ternobiliska, Ukrainian national, requested by the American authorities, namely the United States Department of Justice by note dated **1** April 2014 (ON 43), to be prosecuted for the offences listed in the extradition request from the United States, is

not authorised.

II./

The alternative measures imposed by decreed of the Regional Criminal Court Vienna on 14 March 2014, GZ 313 HR 62/13k-20, supplemented by the ruling dated 26 March, are amended while upholding the retention of the bail in the amount of EUR 125 000 000, to the extent that the person affected is (only) given the instruction to be reachable by post via his defence counsel until the legally binding end of the extradition proceedings, and to comply with court summons.

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Reasoning

An extradition case is pending against the Ukrainian national Dmitry Firtash, born 2 May 1965, at the Regional Criminal Court Vienna under AZ 313 HR 62/13k for prosecution to the United States of America.

With a note dated 11 March 2014 (p 19 in ON 12), the US Department of Justice under GZ 95-10022993 - based on Article 13 of the Extradition Treaty between the Government of the Republic of Austria and Government of the United States, BGBI. III No. 216/1999 (hereafter abbreviated: Extradition Treaty) - requested the imposition of temporary detention awaiting extradition on Dmitry Firtash; in this note reference was made to the justification based on a request to the same effect dated 30 October 2013 (p 3 ff in ON2), and the filing of a formal extradition request was promised (p 13 ff in ON 11; p 7 in ON 6).

According to this representation of facts, Dmitry Firtash is suspected - summarised in brief - of having led a criminal conspiracy consisting of Andras Knopp, Suren Gevorgyan, Gajendra Lal, Periyasamy Sunderalingam, KVP Ramachandra Rao and other known and unknown persons, which, it is alleged, from 2006 onwards in connection with a mineral mining project (specifically of the mineral Ilmenite, which can be processed into various titanium products) in the Indian Federal state of Andhra Pradesh, paid bribe monies to officials of the regional government of Andhra Pradesh and the

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Central Government of India, m order to receive the licences necessary for themining.

In this context, the person affected is alleged to have personally ordered the payment of in total USD 18.5 million in bribes in favour of various officials and to have in addition instructed his employees to falsify documents in order to suggest a legitimate business background to the payments (p 3 and following in ON 6). In order to drive the mining project forward, in particular also funds of Group DF, which is under the ownership of the person affected, are alleged to have been used, where for the execution of the transfer of the bribes amounting to millions, US financial institutions were used.

According to the investigations of the requesting state, in addition logistical and communication facilities are also alleged to have been used within the United States, in order to coordinate the bribery of Indian officials.

In addition the US Department of Justice referred to the indictment filed against the person affected under indictment number 13-CR-515 at the Federal Circuit Court for the District of Illinois North on 20 June 2013 for conspiracy to blackmail, conspiracy to money laundering, international travel in support of blackmail activities, conspiracy to bribe foreign officials, subsumed as violations of Section 18 of the United States Code, §§ 371, 1952, 1956 and 1962 with a maximum punishment of twenty years; on the basis of this indictment a court arrest warrant was issued against the person affected (Item E, p 15 fin ON 12).

By court order dated 14 March 2014, GZ 313 HR 62/13k- 20, according to the application from

the Public Prosecution Vienna regarding Dmitry Firtash who was arrested on 12 March 2014 and taken to the prison Vienna-Josefstadt, detention awaiting extradition was imposed with effect until 28 March 2014 pursuant to § 173 (1) and (2) line 1 StPO in connection with § 29 ARHG, where release from detention was agreed in return for payment of bail of Euro 125,000,000 as well as the undertakings not to flee or hide until the legally binding end and termination of the extradition case, including in the event of a legally binding admissibility of the extradition to the United States, until the time of the actual handover to the requesting authorities, and not to leave Austria (§ 173 (5) line 1 StPO); to comply with court and police summons; to continue to be resident or reachable by post at the address 1040 Vienna, 5 Schwindgasse and to notify the court of any change of residence within Austria, unprompted and without delay; in the event of a change of address to give the court an address by 18 March 2014, at which the person affected will be staying (ON 20).

These undertakings were already provided in advance by the person affected in the court interrogation of 14 March 2014 in preparation for the bail being posted (p 13 in ON 19).

The bail was posted subsequently and the person affected was released from detention on 21 March 2014, after verification of the source of the funds pursuant to § 180 (3) StPO (p 17 fin ON 1).

By a ruling dated 26 March 2014, the undertakings already imposed on the person affected with the order of 14 March 2014 (ON 20) were supplemented according to § 177 (4) second sentence StPO with the

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withdrawal of the - already voluntarily surrendered (ON 33) - travel passport.

For the criminal prosecution of the person affected, in the United States of American in the Federal Circuit court for the District Illinois North, on 20 June 2013 a prosecution document in the form of a bill of indictment was filed and the factual circumstances described therein constitute the foundation of the request for extradition.

The bill of indictment filed with the Court Illinois North on 20 June 2013 under prosecution number 13-CR-515 is as follows:

COUNT ONE

THE SPECIAL JANUARY 2012 GRAND JURY charges:

1. At times material to this indictment:

a. Defendant DMITRY FIRTASH, also known as "Dmytro Firtash," and "DF," exercised control over "Group DF," an international conglomerate of companies that were directly and indirectly owned by Group DF Limited, a company organized under the laws of the British Virgin Islands. The companies within Group DF included, but were not limited to, the companies listed in Schedule A to this indictment, which is incorporated herein by reference. Among them were the following companies:

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i. Ostchem Holding AG was a company registered in, and with headquarters in, Vienna, Austria. Ostchem Holding AG was in the business of mining and processing minerals, including titanium.

ii. Global Energy Mining and Minerals Limited ("GEMM") was a company organized under the laws of Hungary. GEMM was the majority shareholder ofBothli Trade AG.

iii. Bothli Trade AG was a company organized under the laws of Switzerland.

b. The Central Government of the Republic oflndia was based in New Delhi, India. Andhra Pradesh was a State within the Republic of India. The State Government of Andhra Pradesh was based in Hyderabad, India.

c. In or around April 2006, Bothli Trade AG entered into a memorandum of understanding with the State Government of Andhra Pradesh. In the memorandum of understanding, Bothli Trade AG and the State Government of Andhra Pradesh agreed to set up a joint venture for the purpose of mining various minerals within Andhra Pradesh, including ilmenite, a mineral which can be processed into various titanium-based products such as titanium sponge (the "project").

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d. Company A was a Delaware corporation that maintained its corporate headquarters and principal executive offices in Chicago, Illinois. Company A was a purchaser of titanium products.

e. In or around February 2007, Company A entered into a memorandum of agreement with Ostchem Holding AG, by and through Bothli Trade AG. The agreement specified that the parties would work towards entering into a supply agreement whereby Bothli Trade AG would supply 5,000,000 to 12,000,000 pounds of titanium sponge to Company A on an annual basis. The titanium sponge to be supplied to Company A was to be derived from the project.

f. Licenses were required for the project before m1mng could begin. These licenses required the approval of both the State Government of Andhra Pradesh and the Central Government prior to their issuance. The approval and issuance of such licenses were discretionary, non-routine governmental actions.

g. There were in force and effect criminal statutes of the Republic of India prohibiting bribery of public officials, including the Prevention of Corruption Act, 1988. The

Prevention of Corruption Act, 1988, included the following provisions, the violation of each of which was punishable by a term of imprisonment of more than one year:

i. Section 7 made it an offense for a public servant to accept, obtain, agree to accept or attempt to obtain, for himself or for any other person, any gratification (including but not limited to money) other than legal remuneration as a motive or reward for: doing any official act; showing favor to any person in the exercise of official functions; or rendering or attempting to render any service to any person, with the Central Government, any State Government, any local authority, corporation or Government company, or with any public servant.

ii. Section 8 made it an offense for any person to accept, obtain, agree to accept or attempt to obtain, for himself or for any other person, any gratification (including but not limited to money) as a motive or reward for inducing, by corrupt or illegal means, any public servant to: do any official act; show favor to any person in the exercise of official functions; or render or attempt to render any service to any person, with the Central Government, any State Government, any local authority, corporation or Government company, or with any public servant.

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iii. Section 9 made it an offense for any person to accept, obtain, agree to accept or attempt to obtain, for himself or for any other person, any gratification (including but not limited to money) as a motive or reward for inducing, by the exercise of personal influence, any public servant to: do any official act; show favor to any person in the exercise of official functions; or render or attempt to render any service to any person, with the Central Government, any State Government, any local authority, corporation or Government company, or with any public servant.

iv. Section 10 made it an offense for a public servant to abet a violation of Section 8 or Section 9.

h. Y.S. Rajasekhara Reddy, now deceased, was a member of the State Legislature of Andhra Pradesh and was the Chief Minister of the State of Andhra Pradesh.

i. Defendant K.V.P. RAMACHANDRA RAO, also known as "KVP," and "Dr. KVP," was an official of the State Government of Andhra Pradesh and was a close advisor to Chief Minister YS Rajasekhara Reddy.

j. Defendant GAJENDRA LAL, also known as "Gaj," was a

permanent resident of the United States and resided in Winston-Salem, North Carolina.

I. THE ENTERPRISE

2. There existed a criminal organization, that is, a group of individuals consisting of defendants DMITRY FIRTASH, also known as "Dmytro Firtash," and "DF," ANDRAS KNOPP, SUREN GEVORGYAN, GAJENDRA LAL, also known as "Gaj," PERIYASAMY SUNDERALINGAM, also known as "Sunder," K.V.P. RAMACHANDRA RAO, also known as "KVP," and "Dr. KVP," and others known and unknown.

3. This criminal organization, including its leadership, membership and associates, constituted an "enterprise" as that term is used in Title 18, United States Code, Section 1961(4) (hereinafter, the "enterprise"), that is, a group of individuals associated in fact, which enterprise was engaged in, and the activities of which affected, interstate commerce.

4. The members of the enterprise constituted an ongoing organization whose members functioned as a continuing unit for the common purpose of achieving the objectives of the enterprise. The purposes of the enterprise included but were not limited to providing income for certain of its members through illegal activities.

5. The illegal activities of the enterprise included, but were not limited to: (a) utilizing United States financial institutions to engage in the international transmission of

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millions of dollars for the purpose of bribing Indian public officials in connection with obtaining approval of the necessary licenses for the project, which project was forecast to generate more than $500 million in revenues per year, including revenues generated from the sale of titanium products to Company A; (b) using facilities of interstate and foreign commerce to coordinate, plan, facilitate and promote the bribery of Indian public officials; (c) using Group DF, including its business reputation and financial resources, in order to advance, participate in and finance the project, as well as to fund, transfer and conceal bribe payments made in connection with the project; (d) using threats and intimidation to advance the interests of the enterprise's illegal activities; and (e) traveling in interstate and foreign commerce to further the goals of the criminal enterprise.

6. In order to carry out its activities, the enterprise utilized individuals employed by and associated with it who had varying roles and responsibilities. The roles and responsibilities were as follows:

DEFENDANT DMITRY FIRTASH

7. Defendant DMITRY FIRTASH, also known as "Dmytro Firtash," and "DF," was the leader of the enterprise. In that capacity, he oversaw, directed and

guided certain of the enterprise's illegal activities. Among other things, FIRTASH caused the direct and indirect participation of certain Group DF companies in the project. FIRTASH met with Indian government officials, including Chief Minister **Y.S.** Rajasekhara Reddy, for the purpose of discussing the project and its progress. FIRTASH authorized payment of at least $18.5 million in bribes to officials of both the State Government of Andhra Pradesh and the Central Government of India to secure the approval of licenses for the project. FIRTASH further directed his subordinates to create documentation to make it falsely appear that money transferred for the purpose of paying these bribes was transferred for legitimate commercial purposes. FIRTASH appointed various of his subordinates, including but not limited to ANDRAS KNOPP, to oversee efforts to obtain the licenses through bribery.

DEFENDANT ANDRAS KNOPP

8 Defendant ANDRAS KNOPP occupied a supervisory role in the enterprise. KNOPP, along with FIRTASH, met with Indian government officials concerning the project. KNOPP also met with representatives of Company A for the purpose of discussing the supply of titanium products to Company A that would be derived from the project. KNOPP supervised and directed the activities of others employed byand

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associated with the enterprise, including but not limited to defendant GAJENDRA LAL. KNOPP, along with FIRTASH, was consulted in connection with major decision-making relating to the project, including significant action taken with respect to the payment of bribes to Indian public officials.

DEFENDANT SURENGEVORGYAN

9. Defendant SUREN GEVORGYAN served the enterprise by, among other things: (i) traveling to Seattle, Washington, and meeting with personnel from Company A concerning the potential supply of titanium products to Company A; (ii) signing documentation to make it falsely appear that money transferred for the purpose of paying bribes was transferred for legitimate commercial purposes; (iii) monitoring the total amount of bribe payments made; and (iv) coordinating transfers of money to be used to bribe Indian public officials.

DEFENDANT GAJENDRA LAL

10. Defendant GAJENDRA LAL, also known as "Gaj," served the enterprise by, among other things: (i) providing status reports to FIRTASH and KNOPP concerning efforts to obtain licenses for the project; (ii) monitoring the total amount of bribe payments made; (iii) seeking FIRTASH's and KNOPP's

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authorization to pay additional bribes; (iv) recommending what course of action to take on the project, including whether and in what manner to pay certain bribes to Indian public officials; (v) causing the preparation of documentation to make it falsely appear that money transferred for the purpose of paying bribes was transferred for legitimate commercial purposes; and (vi) coordinating transfers of money to be used to bribe Indian public officials.

DEFENDANT PERIYASAMY SUNDERALINGAM

11. Defendant PERIYASAMY SUNDERALINGAM, also known as "Sunder," served the enterprise by, among other things: (i) meeting with defendant K.V.P. RAMACHANDRA RAO for the purpose of determining the total amount of bribes to be paid to Indian public officials in return for approval of the licenses required for the project, and advising other enterprise members of the results of the meeting; (ii) identifying various foreign bank accounts held in the names of nominees outside of India that could be used to funnel bribe payments to RAO; and (iii) monitoring the total amount of bribe payments made.

DEFENDANT K.V.P. RAMACHANDRA RAO

12. Defendant K.V.P. RAMACHANDRA RAO, also known as "KVP," and "Dr. KVP," served the enterprise by, among other things: (i) abusing his position as an official of the State of Andhra Pradesh and close advisor to Chief Minister **Y.S.** Rajasekhara Reddy to solicit bribes for Indian public officials, including himself, in return for approval of licenses for the project; (ii) agreeing to accept bribe money, including bribe money for his own benefit, in return for the approval of licenses for the project; and (iii) warning fellow enterprise members concerning the

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threatofapossible law enforcement investigation of the project.

II. THE RACKETEERING CONSPIRACY

13. Beginningno laterthanin oraround2006, and continuing through the date of the return of this indictment, in the Northern District of Illinois, Eastern Division, and elsewhere,

DMITRY FIRTASH, also known as "Dmytro Firtash," and "DF,"

ANDRAS KNOPP,

SUREN GEVORGYAN,

GAJENDRA LAL, also known as "Gaj,"

PERIYASAMY SUNDERALINGAM, also known as "Sunder," and K.V.P. RAMACHANDRA RAO, also known as "KVP," and "Dr. KVP,

defendants herein, being persons employed by and associated with an enterprise, that is, the enterprise as described in paragraphs 2-5 above, which enterprise engaged in, and the activities of which affected, interstate and foreign commerce, did knowingly conspire together and with other persons known and unknown to the Grand Jury,

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to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity as those terms are defined in Title 18, United States Code, Sections 1961(1) and (5), in violation of Title 18, United States Code, Section 1962(c), as further specified in paragraphs 14 and 15 below.

14. The pattern of racketeering activity consisted of multiple acts indictable under:

a. Title 18, United States Code, Section 1952 (travel in interstate and foreign commerce and use of facilities in interstate and foreign commerce in aid ofracketeering activity); and

b. Title 18, United States Code, Section 1956 (laundering of monetary instruments).

15. As part of the conspiracy, each defendant agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of the enterprise.

III. MANNER AND MEANS OF THE CONSPIRACY

16. Among the manner and means of the conspiracy agreed to by the defendants were the following:

a. It was part of the conspiracy that FIRTASH caused Group OF companies to,

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among other things: (a) participate in the project; (b) finance the project; (c) enter into written agreements for the purpose of concealing the illegal nature of bribe payments made in connection with the project; and (d) fund and transmit bribe payments made in connection with the project.

b. It was further part of the conspiracy that one or more of the conspirators caused the transfer funds to a place in the United States from or through a place outside the United States, and from a place in the United States to or through a place outside the United States, with the intent to promote the carrying on of specified unlawful activity, namely, with respect to a financial transaction occurring in part in the United States, an offense against a foreign nation, India, involving bribery of a public official. These funds transfers included but were not limited to the following:

1. The transfer of approximately $200,000 from Greensboro Corporation to MIS Yash Fashion LLC on or about April 28, 2006.

11. The transfer of approximately $300,000 from Lovat Limited to MIS Yash Fashion LLC on or about May 10, 2006.

111. The transfer of approximately $500,000 from Lovat Limited to Eikon International Holding FZ LLC on or about June 14, 2006.

1v. The transfer of approximately $2,000,000 from Lovat Limited to Gobest International Limited on or about November 27, 2006.

v. · The transfer of funds from Bothli Trade AG to

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Romtex Co. Limited on or about the following dates and m the following approximate amounts:

Date	Amount
March 26, 2007	$150,000
May 23,2007	$200,000
June 6, 2007	$100,000
April 1, 2008	$475,000

v1. The transfer of funds from Romtex Co. Limited to MIS Yash Fashion LLC on or about the following dates and in the following approximate amounts:

Date	Amount
June 29, 2006	$68,750
July 17, 2006	$308,500
July 19, 2006	$250,000
August 4, 2006	$200,000
September 18, 2006	$250,000
September 29, 2006	$200,000
November 8, 2006	$200,000
November 16, 2006	$100,000
December 18, 2006	$70,000
April 3, 2007	$60,000
May 29,2007	$150,000
June 7, 2007	$60,000
June 12, 2007	$40,000
August 24, 2007	$80,000
September 13, 2007	$20,000
April 16, 2008	$75,000
June 27, 2008	$200,000
June 30 2008	$100 000
July 3, 2008	$100,000

v11. The transfer of funds from Romtex Co. Limited to MIS Fashion Shop LLC on or about the following dates and in the following approximate amounts:

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Date	Amount
March 26, 2007	$100,000
July 2, 2008	$100,000
July 7. 2008	$100 000

v111. The transfer of funds from Romtex Co. Limited to Rewa International Limited on or about the following dates and in the following approximate amounts:

Date	Amount
December 14, 2006	$250,000
December 18. 2006	$250.000
January 10, 2007	$300,000
January 12, 2007	$200,000
August 10, 2007	$250,000
August 16, 2007	$250,000
June 27, 2008	$250,000
July 2, 2008	$250,000

1x. The transfer of funds from Romtex Co. Limited to Penta Traders on or about the following dates and in the following approximate amounts:

Date	Amount
August 9, 2007	$125,000
August 16, 2007	$125,000

x. The transfer of approximately $125,000 from Romtex Co. Limited to K.H. Traders on or about August 9, 2007.

x1. The transfer ofapproximately $200,000 from Company B to Rewa International Limited on or about June 2, 2008.

XII. The transfer of approximately $50,000 from Gobest International Limited to Individual A on or about November 14,

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2007.

xm. The transfer of approximately $40,000 from Navasa Ventures Limited to Individual Bon or about August 11, 2009.

xiv. The transfer of funds from Bothli Trade AG to Individual B on or about the following dates and in the following approximate amounts:

Date	Amount
August 18, 2008	$50,000
October 14, 2008	$25,000
August 18, 2009	$45,000

xv. The transfer of approximately $250,000 from Navasa Ventures Limited to Zahrat Al Khaleej on or about September 15, 2009.

xvi. The transfer of funds from Navasa Ventures Limited to Triumphal Investments on or about the following dates and in the following approximate amounts:

Date	Amount
February 12, 2010	$500,000
June 7, 2010	$200,000

xvn. The transfer of funds from Bothli Trade AG to Company C on or about the following dates and in the following approximate amounts:

Date	Amount
July 28, 2009	$28,500
August 18, 2009	$15,000
October 19, 2009	$43,500
December 18, 2009	$2,100
May 25,2010	$13,500
July 13, 2010	$2,200

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c. It was further part of the conspiracy that one or more of the conspirators used and caused the use of foreign bank accounts held in the names of nominees located outside of India in order to receive funds intended for distribution to Indian public officials as bribes in return for approval oflicenses needed for the project.

d. It was further part of the conspiracy that one or more of the conspirators prepared documentation to make it falsely appear that money transferred for the purpose of paying bribes was transferred for legitimate commercial purposes.

e. It was further part of the conspiracy that, in order to obtain approval of licenses for the project, one or more of the conspirators caused Individual C to be involved in the project, and did steer a contract and payments to a company controlled by Individual C, because of Individual C's status as a relative of Chief Minister **Y.S.** Rajasekhara Reddy.

f. It was further part of the conspiracy that one or more of the conspirators traveled and caused others to travel in interstate and foreign commerce with intent to promote, manage, establish, carry on, and facilitate the **promotion,management, establishment, and carrying on of money laundering; and thereafter, did perform, cause to be performed and did aid and abet the performance of acts to promote, manage, establish, and carry on and facilitate the promotion, management, establishment, and carrying on of said unlawful activity including but not limited to the following:**

1. On or about August 21, 2006, GEVORGYAN traveled from New York to Seattle, Washington, and thereafter met with

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representatives of Company A and discussed the progress of the project.

11. On or about February 14, 2007, GEVORGYAN traveled from Cincinnati, Ohio to Seattle, Washington, and thereafter met with representatives of Company A and discussed, among other things, the progress of the project and the terms on which titanium products would be supplied to Company A.

111. On or about June 28, 2009, LAL traveled from Greensboro, North Carolina to Hyderabad, India, for the purpose of attending a meeting with FIRTASH, KNOPP and others concerning the progress of the project.

1v. On or about July 5, 2009, LALtraveled from Chicago, Illinois to Greensboro, North Carolina, and thereafter (i) informed KNOPP about Individual C's planned meeting with an Indian public official concerning the project and Individual C's request for additional money for bribe payments; and (ii) instructed a subordinate to pay certain outstanding fees due to professionals who were assisting with the project.

v. On or about July 14, 2009, LAL traveled from Greensboro, North Carolina to Flushing, New York, and thereafter attended a meeting with representatives of Company D for the purpose of soliciting the participation of Company Din the project.

v1. On or about August 3, 2009, LAL traveled from Greensboro, North Carolina to New Delhi, India, and thereafter met with Individual C and discussed with Individual C the transfer of additional funds intended for use to bribe Indian public officials.

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v11. On or about August 16, 2009, LAL traveled from Chicago, Illinois to Greensboro, North Carolina, and thereafter instructed a subordinate to (i) transfer funds, which were intended for use to bribe Indian public officials, to a nominee oflndividual C; and (ii) pay certain outstanding fees due to professionals who were assisting with the project and to pay other outstanding project expenses.

g. It was further part of the conspiracy that one or more of the conspirators used and caused the use of the internet, and used and caused the use of e- mail accounts hosted on computer servers located within the United States with intent to promote,

manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of money laundering; and thereafter, did perform, cause to be performed and did aid and abet the performance of acts to promote, manage, establish, and carry on and facilitate the promotion, management, establishment, and carrying on of said unlawful activity, including but not limited to sending andreceiving

e-mails to discuss the status of the conspirators' activities and to discuss and direct future activity.

h. It was further part of the conspiracy that one or more of the conspirators used and caused the use of cellular telephones, including but not limited to a cellular telephone located in Chicago, Illinois, and operated on the interstate

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network of AT&T, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of money laundering; and thereafter, did perform, cause to be performed and did aid and abet the performance of acts to promote, manage, establish, and carry on and facilitate the promotion, management, establishment, and carrying on of said unlawful activity, including but not limited to communicating the status of the conspirators' activities and discussing and directing future activity.

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1. It was further part of the conspiracy that one or more of the conspirators used intimidation and threats to compel adherence to instructions provided by the enterprise's leadership and to prevent disclosure of the conspiracy to law enforcement.

J. It was further part of the conspiracy that the conspirators misrepresented, concealed and hid, caused to be misrepresented, concealed andhidden, and attempted to misrepresent, conceal and hide the illegal operation of the enterprise and acts done in furtherance of the enterprise.

All of the above in violation of Title 18, United State Code, Section 1962(d).

COUNT TWO

The SPECIAL JANUARY 2012 GRAND JURY further charges:

1. Paragraph One of Count One of this indictment is hereby realleged and incorporated as if fully set forth herein.

2. Beginning no later than in or around 2006 and continuing through the date of the return of this indictment, in the Northem District of Illinois, Eastern Division, and elsewhere,

DMITRY FIRTASH, also known as "Dmytro Firtash,"
and "DF," ANDRAS KNOPP,
SUREN GEVORGYAN,

GAJENDRA LAL, also known as "Gaj,"

PERIYASAMY SUNDERALINGAM, also known as

Sunder," and

K.V.P. RAMACHANDRA RAO, also known as "KVP" and "Dr.

KVP," defendants herein, conspired with each other and with others known and unknown to the Grand Jury, to transport, transmit, and transfer a monetary instrument and funds to New York, a place in the United States, from a place outside the United States, and from New York and California, a place in the United States, to and through a place outside the United States, with the intent to promote the carrying on of specified unlawful activity, namely, with respect to a financial transaction occurring in part inthe

United States, an offense against a foreign nation, India, involving bribery of a public official (India's Prevention of Corruption Act, 1988), in violation of Title 18, United States Code, Section 1956(a)(2)(A).

All in violation of Title 18, United State Code, Sections 1956(h) and 2.

COUNT THREE

The SPECIAL JANUARY 2012 GRAND JURY further charges:

On or about July 5, 2009, in the Northern District of Illinois, Eastern Division, and elsewhere,

DMITRYFIRTASH, also known as "DrnytroFirtash," and "DF,"

ANDRAS KNOPP,

SUREN GEVORGYAN,

GAJENDRA LAL, also known as "Gaj,"

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PERIYASAMY SUNDERALINGAM, also known as "Sunder," and K.V.P. RAMACHANDRA RAO, also known as "KVP" and "Dr. KVP," defendants herein, traveled and caused another person to travel in interstate commerce from Chicago, Illinois to Greensboro, North Carolina, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, namely, violation of Title 18, United States Code, Section 1956(a)(2)(A) (laundering of monetary instruments); and thereafter, the defendants did perform, cause to be performed and did aid and abet the performance of acts to promote, manage, establish, and carry on and facilitate the promotion, management, establishment, and carrying on of said unlawful activity;

In violation of Title 18, United States Code, Sections 1952 and 2.

COUNT FOUR

The SPECIAL JANUARY 2012 GRAND JURY further charges:

On or about August 16, 2009, in the Northern District of Illinois, Eastern Division, and elsewhere,

DMITRY FIRTASH, also known as "Dmytro Firtash," and "DF," ANDRAS KNOPP,

SUREN GEVORGYAN,

GAJENDRA LAL, also known as "Gaj,"

PERIYASAMY SUNDERALINGAM, also known as "Sunder,"

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and

K.V.P. RAMACHANDRA RAO, also known as "KVP" and "Dr. KVP,"

defendants herein, traveled and caused another person to travel in interstate commerce from Chicago, Illinois to Greensboro, North Carolina, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, namely, violation of Title 18, United States Code, Section 1956(a)(2)(A) (laundering of monetary instruments); and thereafter, the defendants did perform, cause to be performed and did aid and abet the performance of acts to promote, manage, establish, and carry on and facilitate the promotion, management, establishment, and carrying on of said unlawful activity;

In violation of Title 18, United States Code, Sections 1952 and 2.

COUNT FIVE

The SPECIAL JANUARY 2012 GRAND JURY further charges:

1. Paragraph One of Count One of this indictment is hereby realleged and incorporated as if fully set forth herein.

2. At times material to Count Five of this indictment:

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a. GAJENDRA LAL was a "domestic concern" as that term was used in the Foreign Corrupt Practices Act, Title 15, United States Code, Section 78dd- 2(h)(1).

b. DMITRY FIRTASH, ANDRAS KNOPP, SUREN GEVORGYAN, PERIYASAMY SUNDERALINGAM, Group DF Limited, Ostchem Holding AG, GEMMandBothliTradeAGwereeacha"person"asthat termwasusedintheForeign Corrupt Practices Act, Title 15, United States Code, Section 78dd-3(f)(1).

c. K.V.P. RAMACHANDRA RAO and Chief Minister Y.S. Rajasekhara Reddy were each a "foreign official" as that term was used in the Foreign Corrupt Practices Act, Title 15, United States Code, Sections 78dd-2(h)(2) and 78dd-3(f)(2).

3. Beginning nolaterthaninoraround2006 andcontinuing throughthedate of the return of this indictment, in the Northern District of Illinois, Eastern Division, and elsewhere,

DMITRYFIRTASH, also known as "DmytroFirtash," and"DF,"
ANDRAS KNOPP,
SUREN GEVORGYAN,
GAJENDRA LAL, also known as "Gaj," and
PERIYASAMY SUNDERALINGAM, also known as "Sunder,"

defendants herein, did willfully conspire with each other and others known and unknown to the Grand Jury, to commit offenses against the United States, that is,

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a. willfully to make use of means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value, to any person, while knowing that all or a portion of such money and thing of value will be offered, given, and promised, directly and indirectly, to any foreign official and to any foreign political party and official thereof, for purposes of: (i) influencing acts and decisions of such foreign official and foreign political party and official thereof in their official capacities; (ii) inducing such foreign official and foreign political party and official thereof to do and omit to do an act in violation of their lawful duty; (iii) securing an improper advantage; and (iv) inducing such foreign official and foreign political party and official thereof to use their influence with a foreign government and instrumentalities thereof, including the Central Government of India and the State Government of Andhra Pradesh, to affect

and influence acts and decisions of such government and instrumentalities, in order to assist themselves, their associated companies, and their conspirators in obtaining and

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retaining business in connection with the project; in violation of Title 15, United States Code, Section 78dd-2(a); and

b. while in the territory of the United States, willfully and corruptly to make use of means and instrumentalities of interstate commerce, and to do any other acts, in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value, to any person, while knowing that all or a portion of such money and thing of value will be offered, given, and promised, directly and indirectly, to any foreign official and to any foreign political party and official thereof, for purposes of: (i) influencing acts and decisions of such foreign official and foreign political party and official thereof in their official capacities; (ii) inducing such foreign official and foreign political party and official thereof to do and omit to do an act in violation of their lawful duty; (iii) securing an improper advantage; and (iv) inducing such foreign official and foreign political party and official thereof to use their influence with a foreign government and instrumentalities thereof, including the Central Government of India and the State Government of Andhra Pradesh, to affect and influence acts and decisions of such government and instrumentalities, in order to assist themselves, their associated companies, and their conspirators in obtaining and retaining business in

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connection with the project; in violation of Title 15, United States Code, Section 78dd- 3(a).

Overt Acts

4. It was further part of the conspiracy that the defendants committed one or more of the following acts, among others, in furtherance of and to effect the objects of the conspiracy:

a. Paragraphs 16(b)(i)-(xvii) and 16(f)(i)-(vii) of Count One of this indictment are hereby realleged and incorporated as if fully set forth herein.

All in violation of Title 18, United States Code, Sections 371 and 2.

The person affected declared that he did not agree to his extradition to the United States of America and submitted the following points as obstacles to extradition:

Firstly the extradition request of the United States was politically motivated and should therefore be refused.

In addition the requesting state had evidently behaved „dishonestly", whereby also for this reason the request for extradition should be refused.

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As well as this, the whole extradition request, or the extradition documents transmitted, did not produce any founded, cogent grounds for suspicion and also for that reason the extradition was inadmissible.

Additionally there was a lack of dual criminality and furthermore an extradition would be contrary to international law.

In conclusion it was also submitted that an extradition on the basis of breaches of the human rights convention that had already occurred in the requesting state, the request should be refused.

These summarised extradition obstacles were detailed and justified by the defence counsel of the person affected as follows:

1/ Contrariness to international law of the extradition:

An extradition to the destination state would be contrary to international law because in the specific case no principles under international law of state jurisdictional power are present.

Thus in the past various conditions had been created from international law, which govern when a state can apply its criminal laws in a foreign country.

Thus there was the so-called principle of territoriality, which allows a state to exercise its jurisdictional power for offences in its territory.

The active, or passive, principle of personhood allows jurisdiction if perpetrator or victim are domestic citizens.

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In addition the *principle of consequences* allows a state to apply its criminal laws in a foreign country, if the consequences of the offence would have serious consequences domestically.

The so-called *principle of safeguarding* is similarly governed, which takes into account the violation of essential state interests (for example money laundering, espionage, high treason).

Finally the so-called *universality principle* would allow jurisdiction m cases of particularly punishable crimes, for example war crimes or terrorist acts, had been committed.

In the current case however, none of the listed principles are present.

The requesting state claims a few nexus points to its country, in particular that US banks were involved in the payments by the person affected to Indian officials and American telecommunication companies were involved in the alleged conspiracies of the person affected and his employees.

In this regard however a nexus point did not exist with the requesting state, because all payments were made from banks or respectively companies outside the destination state to other such banks or companies, in particular! evidently from a Swiss company to a Cypriot company, without any bank of the United States of America having been involved in this. In any case there would not be any visible evidence for this from theh extradition documents, as no account statements were submitted.

Furthermore - according to the expert report by Dr. Andreas

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STARIBACHER dated 24 April 2015 (AS 11 fin ON 120) - it was clearly recognisable that US banks, if at all had been involved merely as so-called "reference banks".

These reference banks come into use for technical processmg reasons if a person transfers cash amounts in US dollars and this represents an automated process in the background, which cannot be controlled by the will of the person ordering the transfer.

If therefore a US company or a bank of the destination country should really have been involved in any transfers, then merely as a reference bank and this should be seen as a purely automatic process, which could not be controlled by the will of the person affects and therefore in any case a subjective action element is not present.

A nexus that could justify the jurisdiction of the United States of America, would in any case not be present here, because a mere transfer in the currency of the destination country is not sufficient to justify its jurisdiction in an extraterritorial application.

The nexus that the person affected had held negotiations with an American company, Boeing, regarding the sale of titanium which was intended to be mined in India, could not justify a jurisdiction; already for the reason that no products of any kind were sold to Boeing.

Also the nexus that American telecommunications compames or an email server had been involved, could not in any way justify a local jurisdiction of the American authorities.

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Such a nexus would lead to excessive, arbitrary and therefore inadmissible distribution of jurisdiction, as by now there is probably not a single business case in the world in which there was not someone who in some way sent an email from or to a US email server.

Also any telephone conversations m or to India with a "US telephone" are not sufficient to justify the local jurisdiction of the American authorities. Independently of this the extradition documents do not even detail which telephones exactly were used by whom and when.

Also the circumstance that travel took place via the USA, thus that one or more consultants to the corporation of the person affected had travelled to India and this travel went via the US by plane, cannot justify any jurisdiction of the US, even if such travel was potentially preparatory to a criminal activity.

Thus there would be no nexus which could justify a (local) jurisdiction of the requesting state, as the whole factual circumstances of which the person affected is accused did not take place in the destination country, no domestic persons (from the point of view of the US) are affected either as victim or perpetrator and there can also be no question of justifying jurisdiction through the safeguarding and universality principle, considering the person affected is not being accused of war crimes.

The whole factual circumstances do not show any connection to legitimate administration of justice interests of the requesting state and

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therefore the United States of America claiming power of jurisdiction would be an abuse of law.

For this reason an extradition would breach international law and the international law expert Univ Prof. Dr. August REINISCH, LL.M (NYU) (Annex./ IV - AS 25f in ON 97) also came to this conclusion in his expert report dated 31 March 2015.

2.): Regarding absence of dual criminality, it was submitted that already according to the expert report of the US criminal law expert James WEBSTER no jurisdiction of the requesting authorities exists for a criminal prosecution of the person affected.

Equally according to Austrian law, there was an absence of the necessary criminality.

Even when converting the facts of the case being alleged in America or the criminal charge, according to the Austrian code of criminal procedure there could be no nexus that might justify a local competence of Austrian criminal jurisdiction.

As already explained for item 1.), in Austria there could also be no local competence, thus there is a lack of dual criminality and for this reason too, the extradition should be refused.

As a 3.) item which makes an extradition appear inadmissible, it was submitted that breaches of the convention on human rights that had already occurred or that would be impending in the event of extradition would take place or had taken place.

Therefore Art 3, 6 and 9 ECHR as well as § 19 ARHG would be an obstacle extradition.

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Although Art 6 ECHR does not apply as such in extradition proceedings, in the case of evident refusal of a fair trial there was certainly a duty of examination according to this provision.

§ 19 ARHG also standardises that an extradition is inadmissible if there is a concern that the criminal trial in the requesting state might not correspond to, or did not correspond to, the principles of Art 3 and Art 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (item 1).

Thus already in the past in the destination country breaches of the trial and justice guarantees had occurred to the disadvantage of the person affected, in which the principle of equality of arms, the claim to a fair hearing and the right to reasons for judgement and the possibility of an effective remedy of these had been disregarded.

Thus the person affected had been denied the possibility of taking part in the preliminary proceedings, which had been held in secret.

He therefore also had no possibility of submitting applications for evidence and, in summary, the American Grand Jury trial had no kind of judicial relief.

To date the person affected had not been interrogated by the American authorities and he was thereby deprived of the right to a legal hearing as well as of the right to file insight, which he had also been denied to date, as despite all the efforts by his defence lawyers, file insight had been denied by the American authorities to date.

This meant that the person affected had been substantially prevented from realising his rights to a defence in the destination country.

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This was also an indication that in addition to the breaches under Art 6 ECHR that had already taken place, in the event of an extradition such breaches would continue to take place and the person affected would be denied a fair trial m the meaning of the Human Rights Convention.

The person affected in the event of an extradition to the destination country would also be threatened with disproportionate punishment, which contradicts Art 3 ECHR.

In the event of a conviction of the person affected, it could be assumed that a custodial sentence would be imposed of in any case 20 years without the option of early release and the defence lawyers referred in this regard to the submitted expert reports by the expert James Webster.

This punishment was grossly disproportionate, also because the American authorities are additionally a1mmg for the complete confiscation of the assets of the person affected.

Thus the American public prosecution applied for the forfeiture of the entire assets of the person affected, although the allegation that 18.5 million USD had been reserved for bribes was far below the asset level of the person affected.

The forfeiture of the entire assets of the person affected was therefore disproportionate and excessive.

A punishment with such a high custodial sentence and the total dispossession were not justified, nor reconcilable with the requirement of a meaningful and reasonable punishment. In any case the proportionality limit of Art 3 ECHR would be exceeded.

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Art 8 ECHR also contradicts an extradition, as the right of the person affected to private and family life would be violated, as his family lives in Austria and has no connection to the US.

The person affected could not in the event of an extradition uphold any meaningful relationship with his family, in particular to his two children of under 18, and it was not guaranteed whether his wife and his children would even be permitted to enter the destination state.

In conclusion an extradition would also mean a violation of the "arbitrariness prohibition", as a secret criminal trial in the US - from the American point of view - against a foreign national for an offence, which is carried out abroad without any real connection to the US, and this with questionable and illegal methods, clearly for political motivations and in breach of fundamental procedural rights for the person affected. The invocation of higher interests used as a reason shows the arbitrariness particularly clearly as this reason can in principle not be examined under rule of law.

In summary in an overall view, neither the current nor an impending trial in the US stands up to an examination according to the principles of the European Convention on Human Rights.

As a 4th) extradition obstacle it was submitted that the extradition documents of the American authorities do not show reasonable, cogent grounds for suspicion and

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thus the extradition should be refused also for this reason. All the allegations had been freely invented and only served the political goal of the US, which is to remove the person affected from the political decision-making process in his home country.

Thus already according to § 33 ARHG, an independent duty of examination by the requested state exists if the extradition documents give rise to reasonable doubts against the argument of the requesting state and thus against the existence of reasonable grounds for suspicion.
§ 33 (2) ARHG also requires the existence of a specific grounds for suspicion resulting from the extradition documents as a condition for the authorisation of an extradition already in the case of doubts in this regard, a duty of examination would arise of the grounds for suspicion by the requested state.

In extradition cases with the US however the formal principle of examination (applicable in European extradition cases) is not applicable.

Art 10 (3) lit c Extradition Treaty expressly standardises a duty of justification by the requesting state, which logically results in the duty of examination by the requested state.

According to this provision, the extradition request should be supplemented with documents, which provide reasonable basis for the assumption that the extraditable person committed the criminal offence for which the extradition is being requested.

This would on the one hand mean that the extradition documents must produce cogent, specifically comprehensible grounds for suspicion as well as on the other

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hand that this grounds for suspicion must be substantiated by documents, i.e. by evidence.

This interpretation could also be derived from the legislative text of the Austrian-American Extradition Treaty. Thus the American authorities themselves demanded this provision in the Treaty, because in the destination state in principle an examination of the grounds for suspicion according to the Anglo-American legal system has priority.

After reading the extradition documents one must reach the conclusion that these are illogical and contradictory and cannot substantiate any specific criminal charge.

It is not shown of what the offending action of the person affected consists, it is not explained whether or which officials were even allegedly bribed and the American authorities had not provided a single piece of evidence despite repeated requests by the court.

This 1s because there 1s no proof that could incriminate the person affected.

Thus it is completely open, how, when, where and which persons are even supposed to have been bribed and it is in addition not clear which specific contribution to the offence the person affected himself is alleged to have made.

The American authorities were aware of this and for that reason had chosen Austria as the country in which they would request the extradition, as they had assumed that in that country a careful examination of the extradition documents with regard to the grounds for suspicion would not be made.

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Thus the extradition request relied predominantly on the indictment by the American authorities against the person affected, which however as an *Indictment* by a Grand Jury does not have much in common with a prosecution under Austrian law or according to a preliminary trial in the meaning of the Austrian code of criminal procedure.

A US indictment certainly does not justify the assumption of reasonable grounds for susp1c10n and this is also demonstrated in the explanations of the American legal expert James Webster in his written expert report.

An American indictment, despite the involvement of laypersons, differs substantially from, for example, an Austrian jury court, considering that a Grand Jury is not presided over by a judge, but is presided over by the same public prosecutor who himself filed the indictment.

This public prosecutor at his discretion calls 12 to 23 arbitrarily selected laypersons, who have no knowledge of the file or of the preliminary investigation, and under his own presidency sets out the evidence existing in his opinion without, unlike Austrian public prosecutors, being under obligation of impartiality.

He is thus not obliged to submit or present the laypersons with any exonerating evidence he may have.

He decides himself, whether and which evidence he presents or withholds.

The members of the Grand Jury did not have the opportunity to question the evidence or to request additional evidence. Also the person accused or his defence

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lawyers are not present, they often do not even know that a Grand Jury been convened.

Also in the criminal trial under discussion, the person affected did not have the opportunity to take part in this trial, to present his view of things, to stand to account or to submit exonerating evidence.

Also there were almost no cases in which a Grand Jury decides not to grant the indictment presented by the American public prosecutor.

According to official statistics, US Federal public prosecutors in 2010 brought 10,062 indictments before a Grand Jury of the Federation and only in eleven of these cases was the application of the public prosecutor not granted.

Also in such a case the public prosecutor has the possibility of simply presenting the same evidence or indicting counts again before another Grand Jury, in order to obtain the permission to indict in a second attempt, without changing the evidence.

This is why also at the universities in the US it is taught that one could "indict a ham sandwich" and would get an indictment.

The decision of the Upper Regional Court Vienna dated 29 January 2015, although this was passed in a domestic proceeding, also shows clearly that the American authorities' indictment brought by a Grand Jury lacks specific suspicion, in the absence of any evidentially relevant details or even a listing by name of the

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relevant evidence.

The American authorities had not attached any documents to the extradition documents, above all no significant documents, although they were under an obligation to do so, or had been requested to do so by the court.

Solely a single, totally out of context page of a PowerPoint presentation had been sent.

This however provably did not even come from any enterprise or any employee of Group DF, but from a third company, which showed the constructed evidence.

It was not even claimed by the requesting authorities that the person affected even had anything to do with this single transmitted document.

Also the American authorities had to date not submitted any witness statements, although it is evident from the indictment in the US and the explanations of the special investigators of this case, that the suspicion is also, or especially, ba ed on the statements of various witnesses.

Rather the US authorities had admitted upon enqmry that they did not have the reports of the witness interrogations, but only the written perceptions and memories of various FBI agents, in which they summarise the statements of the witnesses.

The requesting state also categorically refused the questioning of the witnesses themselves offered by the extradition court. This makes clear that t4ere are no witnesses in the requesting state who can incriminate the person affected.

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Also no account statements were submitted and the expert report by Dr. Andreas STARIBACHER made clear that not a single US company was involved in any transfers and this was the reason why no account documents had been submitted.

This was particularly notable because precisely the submission of account statements could not contradict any criminal tactical calculation, because these must be account statements that were within the sphere of influence of the person affected and therefore must be known to him. There would therefore be no reason to withhold such documents, unless these do not exist.

Also the American authorities had not provided any evidence of whether the alleged bribe payment recipients were even officials in the meaning of Section 74 StGB [Austrian Penal Code], and relevant claims to this effect were not even made.

The extradition documents also lack various fake contracts disguising bribe payments, although these were explicitly listed in the indictment.

Although therefore since 2008 an investigation has been underway against the person affected, which includes global requests of legal assistance, telephone surveillance, account insights and house searches, and disguised investigators were used, there was not a single piece of evidence which could even begin to substantiate the offence allegations.

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Also the questioning of the witnesses Gajendra LAL and Periyasamy SUNDERALINGAM offered by the defence proves that all payments had a completely legitimate background.

Equally, the person affected himself did not undertake any operative activity in this project and it is also completely unrealistic to assume that the company boss of a globally operational business would have the time and leisure to deal with the details of a project in India.

The statements of LAL also confirm that substantial pressure was. brought to bear on him by the investigating authorities in the US, to invent an allegation against FIRTASH. It had been requested of him to use the word "bribery" and he had been told that this was permissible because he was now on the "side of the good guys".

The domestic proceedings brought by the Vienna public prosecution proved that there were no grounds for suspicion of the person affected in connection with the bribe payments in India.

On the basis of a request for legal assistance filed with facts that were identical to the content of the extradition request, the Austrian authorities opened a domestic prosecution against the person affected, because according to the claims of the US authorities, an Austrian account had been used amongst others for the bribe payments.

Finally all allegations had shown themselves to be completely unfounded in the (Austrian) domestic proceedings and these were about to be abandoned.

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Also all requests for legal assistance filed by the American authorities (requests for account disclosures, confiscation) were finally refused by the Austrian courts. Thus also the Upper Regional Court Vienna m the context of a request for legal assistance themselves realised that not even a simple suspicion could be derived from the whole substance of the file.

Also in India itself there were no investigations. Although the allegations that bribes had been paid and received in India became publicly known and there had been a change of government in India in the meantime. Despite this, to date no investigations have been launched.

Also the behaviour of the American authorities, who were asked by the court to send supplementary documents, or to answer questions on these, shows that they are not in a position to prove a specific suspicion.

Thus these questions were either not answered at all, or only evasively, misleadingly and insufficiently or only after their own re-formulation of the question.

Therefore in the absence of a single comprehensible suspicion, the extradition request of the United States was therefore to be refused.

The whole absence of evidence with simultaneous extreme investigative pressure by the US instead makes clear that the American authorities are not

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interested in the prosecution of the person affects in the present extradition request, but that they want to support their own geopolitical goals in the Ukraine.

According to Art 4 (3) of the Extradition Treaty between Austria and the United States of America, an extradition should be refused if the extradition request was made at least partially also for political motivations.

That the extradition request that is the object of the trial is at least partially also politically motivated is evident from the fact that Ukraine has been of strong geopolitical interest to the US as well as Russia and the EU since the break-up of the USSR.

It was a matter of gas, titanium as well as the question of which free trade zone Ukraine should join. In particular the United States of America were committed to Ukraine approaching the "West", the European Union and simultaneously movmg away from Russia, in particular economically.

The person affected himself had been a highly influential person in Ukraine and was therefore a focus of American interests.

From the point of view of the requesting state, the person affected was seen as close to Russia, which would impede the political and economic interests of the US.

Thus he had concluded an agreement with Gazprom and this was proof for the American authorities that he represented the interests of Russia in Ukraine. Also his involvement in the titanium sector, which

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was of great important to the US, in particular m aircraft construction and the military industry, went against American interests.

In addition the person affected was an extremely influential person m Ukraine, he was the Co-Chairman of the employer's association and thereby had a huge influence on the Ukrainian electorate.

A comparison of the timing of the extradition requests filed by the American authorities with the events in and around Ukraine would show that the extradition request had a political background.

Thus the American interest in the person of FIRTASH had already moved to the foreground in 2006, when the person affected solved one of the many gas crises between Russia and Ukraine, when he ensured the continuation of gas deliveries to Ukraine from Russia with a Joint Venture (RUE), in which he and Gazprom held a 50% share each.

The interest of the United States in the person affected already had effects in Austria in 2006, when various Austrian authorities (finance ministry, FMA, foreign ministry) intervened and exercised pressure on the Raiffeisen subsidiary RIAG, which held the shares in RUE in trust for FIRTASH.

In addition he was, in summary, both politically and in business an opponent of Julia TIMOSCHENKO, who in turn should herself be seen as an ally of the US.

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In 2010 the person affected supported the Ukrainian candidate at the time Victor YANUKOVICH in the election against TIMOSHENKO and YANUKOVICH was elected First Minister of Ukraine in large part because of his involvement. The first request for temporary arrest of the person affected to the Austrian authorities dated 30 October 2013 was consciously filed at the point when Ukraine under the then First Minister YANUKOVYCH had to decide whether the EU association agreement would be signed or not.

The person affected was seen by the American authorities as an extremely influential person, who was at YANUKOVICH's side as an advisor.

When after conversations between YANUKOVICH and PUTIN, Ukraine began to postpone the signing of the EU association agreement due to pressure from Russia, the American authorities consciously filed the extradition request with the Austrian authorities, in order to be able to put YANUKOVICH under pressure with the arrest of the person affected.

Thus the Assistant Secretary of State of the US, Victoria NULAND, declared on 30 October 2013 that she would be going on a European trip to Ukraine, in order to discuss this question m detail with YANUKOVICH and other representatives of the European Union.

In order to be able to exert pressure if required on YANUKOVICH, the according arrest application had been filed, although the indictment had been brought in America months before and there had would have been sufficient

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opportunity to arrest the person concerned in numerous other countries of Europe.

When these conversations in Ukraine went positively from the point of view of Ukraine, on 4 November 2013 the arrest warrant was withdrawn without a reason, which shows without doubt that it was only filed to be able to exert pressure on the Ukrainian decision-makers.

Also the timing of the renewal of the extradition request on 26 February 2014, when contrasting it with the events in Ukraine, makes clear that political motivations at least accompanied the extradition request.

After the Ukrainian decision-makers refused to sign the EU association agreement and JANUKOVICH fled from Ukraine on 21 February 2014 and thereby a political vacuum was created, the US was trying to fill this according to their interests.

At this point, the person affected had politically supported KLITSCHKO and it had been his plan to „make" KLITSCHKO the First Minister of Ukraine. This plan went against the American interests, because they saw both the person affected and KLITSCHKO as persons who did not represent their interests in Ukraine and this was provable from various Wikileaks documents.

It had been the wish of the US to see Arsenik JAZENJUK at the head of Ukraine and the person affected was therefore to be eliminated from this political

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in vo1vement.

For this reason the second extradition request or request for arrest warrant for the person affected had been issued. The intention was to prevent the person affected from again (like in 2010) successfully supporting a presidential candidate of the Ukraine, who from the point of view of the US went against their interests.

All this was provable from numerous cables, Wikileaks documents, interviews and media reports.

This was also demonstrated forcefully by the circumstance that although the American authorities accused the person affected of a conspiracy, no investigations or extradition requests were being made against other so-called co-conspirators, but only the person affected was in the sights of the American (extradition) interests.

The extradition request was therefore being used in abuse of law for political motivations and was therefore also for this reason not to be granted, on the basis of the text and the purpose of Art 4 (3) of the Extradition Treaty.

In conclusion the behaviour of the American authorities went against an extradition not only in itself but also specifically in this case, because they were obliged to act in "good faith" on the basis of international law considerations, but had repeatedly disregarded this principle.

Thus in particular the three American intelligence agencies, NSA, CIA and FBI repeatedly put witnesses under pressure, manipulated them and tried to force or construct evidence results with dishonest methods. In this regard there were

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numerous reports, amongst others the so-called CIA Torture Report, in which numerous misdeeds by the American investigative authorities were listed.

Also for this reason, an extradition to the destination country should be refused.

The Vienna public prosecutor requested that the extradition be declared admissible. In summary, it was submitted that the necessary extradition documents were present; a political motivation was not evident and not shown in the extradition documents or the submitted descriptions by the person affected. Dual criminality also existed, according to the submission. Equally there were no grounds under international law that went against an extradition.

The reasonable grounds for susp1c1on were seen as given on the basis of the indictment filed by the United States and any decisions or formulations in decisions of the Upper Regional Court Vienna, which were issued in the context of the legal assistance or domestic proceedings, had no connection to the extradition request.

In this regard, these were separate proceedings with individually different examination standards regarding the evidence level.

Rather the whole submission by the person affected was constructed and did not go against an extradition.

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Legal consequences:

In the present case, according to § 1 ARHG primarily usmg the Extradition Treaty between the government of the Republic of Austria and Government of the United States of America, BGBl III No. 216/1999 including protocol BGBl III No. 5/2010 (hereafter abbreviated: Extradition Treaty), it should be examined whether the extradition is admissible, where in the absence of contractual provisions to the contrary the standards of the ARGH shall find application.

The submission of the person affected, that there is a lack in the specific case of the dual criminality that is necessary for an extradition, is inaccurate.

Regarding the question of dual criminality, on the one hand it should be examined whether the factual circumstances of which the person affected is accused in the US are criminally punishable if converted to a potential domestic trial according to the standards of Austrian legal system.

Secondly it should also be examined whether the charge 1s also subject to jurisdiction in the requesting state itself.

Both criminality aspects should be answered in the affirmative.

Article 2 of the Extradition Treaty provides that the extradition due to criminal actions will be authorised if according to the law of both contracting parties these are punishable by more than one year of restriction of freedom or more severe

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punishment (paragraph 1) .

Already on the basis of this prov1s1on, it should be assumed that dual criminality is in all cases a condition for the authorisation of an extradition.

This is however present.

If the person affected submits that, rn connection with the examination of dual criminality to be undertaken according to Article 2 (1) of the Extradition Treaty, it is not present ei°ther in the requesting state nor domestically, then it should be countered that even when converting the facts alleged against the person affected to domestic law, certainly not exclusively offences in a different third-party state from the requesting state, but also criminal acts committed in the US, in particular the use of American financial institutions for the execution of the incriminated transfers of bribe monies as well as the use of logistical and communication facilities within the United States of America for the coordination and promotion of bribery of Indian officials are being alleged (AS 15 in ON 12).

Here above all reference should be made to Item III „Method and Means of the Conspiracy" of the Indictment, in which the partial completion of the financial transaction in the United States are shown and the individual transfers both with regard to the timings of offences, the (estimated rounded) amounts as well as the companies involved are specified. (page 11 following of the Indictment AZ 13 CR 515).

If the person affected thus submits that the involvement of the US financial institutions only took place, if at all, in the form of reference

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banks, which are necessarily involved in transactions in US dollars, then it should be pointed out that also in this respect no specific evidence was given and this assumption is purely speculative.

The expert report by Dr. Andreas STARIBACHER, which comprehensively demonstrates that in international banking transactions it is certainly normal and intended that reference banks are used, does not prove that in the which comprehensively demonstrates that in international banking transactions it is certainly normal and intended· that reference banks are used, does not prove that in the specific case, solely American reference banks were used for the execution of the transactions.

In other respects, such a submission should be made in case of an extradition in the context of the American prosecution and in the extradition proceedings only the facts portrayed in the extradition request should be used as a starting point, and according to Article 2 (6) of the Extradition Treaty, the procedural competence of the requesting state is regularly not examined, because this is assumed as self-understood (ErlautRV 10 8 3BlgNr. GP20).

It should in any case be assumed that if the American authorities file a criminal prosecution against a person, the local jurisdiction is given.

It would be absolutely unrealistic to assume that American investigating authorities, the American attorney general as well as the US Department of Justice would make an extradition request to a state in the knowledge that according to American law a jurisdiction of their authorities did not exist. Whether the suspicion raised against the person

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accused would actually stand up to scrutiny in a detailed examination of the evidence or would lead to a conviction in a main trial is not being addressed in the context of this examination of dual criminality; we are starting only from the described factual circumstances - independently of their provability.

Domestic jurisdiction also exists after convers10n of the circumstances.

Already with a judgement of the Regional Criminal Court Vienna dated 14 March 2014, GZ 313 Hr 62/13k - 20 it was determined that when subsuming the circumstances under Austrian law, criminality according to § 307 (1) and (2) as well as § 278 (Austrian) StGB is given. In this regard we also refer to the judgement of the Upper Regional Court Vienna dated 1 August 2014, GZ 22 Bs 103/ 14d, 22 Bs 110/14h, 22 Bs 111/14f (page 9 of the judgement).

The existence of dual criminality in the meaning of Art 2 (1) of the Extradition Treaty should therefore be definitely confirmed.

On this basis therefore additional discussions regarding the submission by the person affected are moot; according to his submission, international law would go against dual criminality.

Also the submission that in case of an extradition the person affected would risk violations of the Convention on Human Rights is not cogent. The same applies to the claim that in the past, actions in

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contravention of the CHR had taken place against the person affected in the destination country.

If the person affected argues in this regard in particular that the investigation procedure against him in the United States of America had been conducted "in secret", and the person affected had not been informed of it, no contravention of the Convention can be discerned in that.

Thus it is possible and also common practice for reasons of investigation tactics not to inform main suspects of the openmg of investigations, in order to prevent possible or potential evidence suppression or disguising measures.

Therefore also in the context of Austrian investigation procedures the accused often only learns of the opening of the investigation at the conclusion or completion of the investigation and no violation of the human rights convention can be discerned in this, considering that the accused is at least at this point entitled and free to make a statement on the allegations.

Thus also the person affected will have had the opportunity smce March 2014 of making a statement regarding the allegations in the destination state or to represent his view of this, as the charged brought against him is certainly known through the extradition request from the American authorities.

Also the fact that the person affected has to date been denied inspection of the file by the requesting authorities does not justify the assumption that the person affects would not receive a fair trial in the destination state, considering that the Austrian Code of Criminal Procedure in exceptional cases (§ 51 (2) StPO) - is reconcilable

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with the CHR (ErlautRV 25 BlgNR 22. GP 72) allows limitations of file inspection.

Therefore the submission of the person affected does not specifically show that the court criminal prosecution against him in the destination country would take place under conditions that would clearly contravene Art 6 CHR.

Although the extradition proceedings themselves do not fall under the scope of application of Art 6 CHR, but its procedural guarantees can (exceptionally) gain relevant for the judgment on the admissibility of the extradition, if the person affected proves that they are at risk of an evident denial of a fair trial in the requesting state (13 Os 150/07v, 11 Os 6/08m).

Such breaches of the convention were not however submitted, or the claimed breaches of the convention do not go against an extradition.

The (sweeping) complaint of lack of rule of law 1s certainly not sufficient (cf. RIS Justiz RS 01230 (T9).

If the person affected in the event of his extradition fears treatment that infringes Art 3 CHR, it should be countered that the submission does not how any substantial likelihood of current serious risk of treatment in violation of Art 3 CHR by the American authorities.

An extradition can mean a breach of the Convention by the state of current residence, if the person affected is subject to treatment in the

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destination state which reaches the level of inhuman and degrading treatment and is therefore not reconcilable with art 3 CHR.

According to established case law of the ECHR, the substantial likelihood of a current, serious (heavy) risk must be cogently proved, where the evidence must be sufficiently specific. The mere possibility of impending torture or inhuman or degrading treatment is not sufficient. Accordingly a specific risk must exist that the person affected could be exposed to the actual risk of treatment contravening Art 3 CHR, and this must be provable by well-founded reasons (13 Os 150/07v).

In the case of extraditions within Convention states, additionally the responsibility of the extraditing state is limited, because the person affects can obtain legal remedy in the destination country against convention violations. A shared responsibility on the part of the extraditing state therefore only exists if the person affected after his extradition is at risk of torture or other serious or irreparable mistreatment and effective legal remedy - also through the ECtHR - 1s not obtainable, or not obtainable in enough time (14 Os 67/08x).

Here also the senousness of the threatened breach and the other behaviour of the member state of the CHR play a part, and where appropriate the circumstance can be relevant that fundamental human rights are or were violated in the destination state.

Judged according to these principles, the person affected was not able to demonstrate that in case of his extradition to America insufficiently effective legal remedy would be available with regard to the observation of fundamental rights guaranteed under the CHR.

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With regard to the argument of threatened punishment of up to 20 years it is not clear why this threatened punishment should contravene, of itself, Art 3 CHR.

In this context it should be pointed out that the person affected has not yet been convicted in the United States, therefore the extradition is being requested for prosecution. The assumption that in the event of a conviction he sentenced to an· unconditional custodial sentence of 20 years, without the possibility of an early release, is purely speculative.

Even in the event of such a punishment however, no violation of the convention can be discerned there, considering that the sentence of 20 years' custody is within a framework which may be above the punishment under Austrian criminal laws for such offences, would however certainly stand up to an ordre-public assessment.

Refusal an extradition request with the reasonmg that in the event of a conviction the sentence expected is so high that it contravenes the provisions of the CHR, could only be issued it in context of an ordre-public assessment the court reaches the conclusion that this punishment would be completely excessive and not reconcilable with the principles of criminal case-law. The imposition of a custodial sentence of potentially 20 years for the facts being charges against the person affected, would certainly be assessed as severe, is however within the defensible punishment range for such a set of facts.

Also the fact that despite the person affected "only" being accused of payment of bribes in the amount of USD 18.5 million, the forfeiture of

his entire assets is being requested, withstands examination according to Art. 3 CHR.

Also in this regard it must be pointed out that these are only applications, which are subject to penal assessment (including appeal procedure) in the destination state and the application alone for confiscation or forfeiture of assets of the person affected certainly cannot represent a human rights-violating action that is an obstacle to extradition.

Also the prisons that the person affected mentions in Guantanamo are completely taken out of context or even absolutely polemical, as it is in no way discernible what connection these have to the extradition proceedings or to the person affected.

Emotional polemics is not possible to debate objectively, which makes further factual and legal consideration of this point moot.

It shall certainly not be assumed that in the event of extradition of the person affected he would be subjected to inhuman or degrading treatment and there is also no cause to assume that he will be tortured in American prisons. Although in America individual cases of abuse do occur in prisons, it should be pointed out that such incidents cannot be excluded in almost all states, including the European Union, and

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individual cases in no way justify the sweepmg conclusion that every person in custody in that state is subject to such treatment. This submission is thus equally totally baseless.

If the person affected additionally submits that an extradition would contravene Art 8 CHR, then this complaint is also in no way cogent, as a violation of the right to preservation of private and family life under Art 8 CHR certainly does not exist in this instance. On this the ECtHR, mainly however only for limitedly comparable deportation cases (Goth - Flemmich ibid § 22 RZ 4-6) has taken into account the following criteria of the required necessity and proportionality assessment (case Sezen v Netherlands, judgement dated 31 January 2006): [xxx check against original]

The nature and gravity of the offences, the duration of the residence m the country, the time since the commission of the offences, the nationality of the various persons affected in the family, the family situation of the persons affected, the duration of a marriage and finally the seriousness of the difficulties that a spouse or the family would encounter in the home country of the person affected (Frowein/Peukert, ibid Articles mn 39).

In consideration of these points, in particular the type of offences underlying the extradition request, as well as the fact that the person affected and also his family do not regularly reside in Austria, the proportionality assessment to be carried out leads to the according the public interest in an extradition higher weight than the private life of the person affected.

That the person affected has such a close relationship to the country

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that could demonstrate a violation of the convention under Art 8 CHR, is not discernible.

It is also not evident that his family would have such deep roots in Austria, considering that the person affected in fact only lives in Austria now (partially or mainly with his family), because he is ordered not to leave the country due to the extradition proceedings.

Also the submission that his family could not visit him if he were in custody in the US is not cogent and it is purely speculative that the wife as well as the children of the person affected could be denied travel to the United States.

This claim is in no way founded on any evidence and it is therefore not evident why the family of the person affected should allegedly not be able to visit him in an American prison.

No grounds are therefore discernible, why an extradition of the person affected to the destination state should contravene the principles of Art. 8 CHR.

Where the person affected argues that the extradition should be refused because the extradition documents do not show any reasonable grounds for suspicion this argument should be subjected to a more detailed and in-depth assessment.

It should be said in advance that in domestic European extradition matters, an examination of the suspicion only takes place if there are concerns to that effect, in particular if evidence exists or is offered that

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could refute the suspicion without delay(§ 33 (2) ARHG).

According to the Continental European legal tradition, the extradition proceedings are governed by the formal principle of assessment, which means that the authorities in the requesting state m principle just assume the factual basis as it is described in the request for mutual legal assistance, in order to not pre-empt the final clarification of the factual basis in the requesting state. An independent duty of verification of the grounds for susp1c10n only exists in the requested state if the person affected can show serious concerned through relevant substantiated submissions and offers evidence that refutes the suspicion directly and free of doubt (13 Os 16/09s). The requested state therefore must assume the factual representation contained in the extradition documents; the submission of evidence that underlies the suspicion is in principle not requested.

However in extradition matters between Austria and the United States there is a difference due to the Extradition Treaty (see also Goth-Flemmich in WK2 ARHG § 35 mn 3).

One reaches this conclusion by exammmg the history of the currently applicable Extradition Treaty and looking in detail at the materials of this law, in particular the government bill.

The Bilateral Extradition Treaty dated 8 January 1998 was created after more than ten years of contractual negotiations between the two

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states and is seen as a modern Extradition Treaty between two states that have different legal systems.

Before the conclusion of this Treaty, the extradition matters between Austria and the United States were executed on the basis of the Extradition Treaty between the Republic of Austria and the United States of America dated 31 January 1930, BGBl No. 287/1930, in the form of the Supplementary Convention thereto dated 19 May 1934, BGBl II No. 257/1934.

The application of this previously applicable Extradition Treaty led to numerous difficulties, because the form and evidence rules in force in the requested state had to be observed by the requesting state. In particular all evidence had to be submitted which would justify the move to committal for trial ("prima facie evidence").

Thus the Extradition Treaty from 1930 required such evidence of guilt that would justify the committal for trail according to the laws of the requested state, in the same way as if the offence had been committed there.

This prima-facie evidence was difficult to obtain for the requesting state because normally the requirements of burden of proof were not known to the requesting state.

In this context Austria also had to observe the sometimes complicated form requirements of Anglo-American law. These formalities were fundamentally alien to Continental European law.

For the purpose of an extradition request therefore, the evidence already lodged with the Austrian courts had to be repeated in the

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extradition proceedings in the US, rn order to fulfil the American form requirements and to obtain an extradition.

This unsatisfactory circumstance led to initial discussions in 1986 regarding a renewal of this Extradition Treaty and the Treaty currently in force represents a balance compromise reached after protracted negotiations, which was characterised by the goal of effective prosecution going beyond state borders.

The currently valid Extradition Treaty was therefore motivated by the effort to follow the requirements of a modern extradition system, in particular also the waiving of special evidence requirements.

Amongst others the requirement of a prima-facie evidence was eliminated and it is now sufficient if the documents show the "reasonable basis to believe" that the extraditable person committed the offences alleged ("concept of probable cause" (see explanations, general section on the government bill of the Extradition Treaty).

As this a long-negotiated compromise, as the government bill shows, on the one hand it should be assumed that the material principle of verification, which previously governed the extradition system with the US, was eliminated; however also that as before the strictly formal principle of verification is not applicable without limitation, but rather that it should, on a case-by-case basis, be verified whether there is a

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reasonable basis to believe that the person to be extradited is sufficiently suspected of the offences of which he is accused in the destination country or not.

This can also be seen clearly in the formulation of Article 10 (3) of the Extradition Treaty:

According to this, paragraph 3 rules that extradition requests for prosecution must be supported by the following documents:

lit a: a copy of the warrant or order of arrest issued by a judge or other competent authority;

lit b: a copy of the charging document, if any and

lit c: documents setting for sufficient information to provide a reasonable basis to believe that the person to be extradited committed the offense for which extradition is requested and is the person named in the warrant of arrest.

Article 11 of the Extradition Treaty additionally enables the requested state to request supplementary documents or information on the already furnished extradition documents.

To this effect documents must be attached to the extradition documents that show the reasonable basis to believe that the person to be extradited committed the offense for which the extradition is requested, where it is seen as sufficient if the evidence provided supports reasonable suspicion.

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Although it cannot be taken for granted that it was the intention of the contracting parties to set such high requirements, this phrasing does make unmistakably clear that with the regard to the grounds for susp1c10n, a piece of evidence which exceeds the formal principle of verification must be present. Otherwise this phrasing would be inexplicable or superfluous.

If one keeps in mind the long consultations and negotiations that preceded the conclusion of the contract, it can be assumed without doubt that the contracting parties intended such a provision and made it consciously. The Treaty wording clearly shows the aim of the provision:

Clearly the intentioned was to create a "middle way" between Continental European formal principle of verification and the Anglo-American material principle of verification. This compromise was shaped in such a way that in the context of the extradition proceedings no evidentiary hearing must take place in the same way as in a domestic proceeding. However the explanations in the factual description of the extradition request are not taken for granted (without reflection).

While for example in the extradition matters between Member States of the European Union in the context of the European Arrest Warrant, evidence-supporting explanations are not envisaged, the extradition Treaty standardises explicitly that evidence must be submitted that adequately supports the reasonable basis for suspicion.

A meaningful, cogent compromise of two different legal systems.

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According to this premise, it should now be assessed in the individual case m what intensity the evidence with regard to a reasonable basis for suspicion should be provided and the standard of review will, according to the opinion of the court, be set higher the more general and potentially vague the allegation in the requesting state is.

If dual criminality has already been confirmed by Austrian and by American law, then in the assessment of the individual case it is noticeable that the current extradition proceedings do not deal with an offence allegation or set of facts that could be seen as a "routine case".

Finally a Ukrainian citizen, who clearly has large influence in his home country, is alleged of having bribed Indian officials from the Ukraine, and at first glance a connection to the United States of American is not discernible.

Only the nexus pointed out above (and seen as admissible) of use of American banks to transfer money or of American telecommunication companies justify a (local) competence of the American authorities, which should be seen as certainly broad (also according to the Austrian legal understanding).

Certainly in the opinion of the extraditing court, this specific set of facts in itself already requires a higher level of duty of verifying the

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susp1c10n, regardless of the submission of the person affected, due to the particular type of circumstances.

If the case were arranged so that an American citizen had undertaken such acts of bribery or the target of the bribes were an American citizen or if the bribery acts had been carried out in America itself, then the level of verification of reasonable grounds for suspicion would certainly be seen as lower.

In the current case however due to the particular arrangement, the suspicion or the documents furnished which are intended to found the suspicion, must be examined in further detail.

Also because the indictment submitted, the so-called prosecution document of the American authorities, which should be seen as the primary content of the extradition documents, is fundamentally different to a prosecution document of an Austrian public prosecutor.

While a (usually extensive) investigation will precede a committal to trial or indictment by an Austrian prosecuting authority, and the public prosecution is obliged to be objective, these standards are different in the American legal system.

As can be seen from the expert opinion of the US legal expert James

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WEBSTER dated 27 March 2015 (ON 100), the public prosecutor in the American legal system can proceed in two ways when filing an indictment against persons:

a) by filing a prosecution (complaint)

b) issuing an indictment through a Grand Jury (indictment)

In the case of filing a complaint, in the context of an adversarial trial, at which at least also the defence lawyer of the accused can take part, a judge decides in the context of a preliminary hearing whether there are reasonable grounds for the suspicion that can support the relevant prosecution charges. Here the person to be accused has the right to representation by a lawyer and an also question prosecution witnesses as well as present their own evidence.

These opportunities do not exist in the so-called indictment proceedings. The Grand Jury is a legal institution that is made up of 16 to 23 citizens chosen from the community and meets repeatedly over the course of several months, in order to examine the evidence presented by the relevant prosecutor (AS 25 fin ON 100).

In order to be able to bring an indictment in the framework of this proceeding, twelve members of the Grand Jury must agree with the prosecution, while the public is excluded. A court preliminary hearing or a participation of the accused themselves or their representatives is envisaged.

Although the just mentioned legal op1mon 1s a so-called "private opinion", it can be ·assumed also due to the research by the court, that its

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contents, some of which are generally phrased as regards the procedural development of the indictment, certainly correspond to the truth.

Of course it is not being assumed that American prosecutors, if they select such an indictment procedure, are withholding any exonerating evidence from the members of the Jury in abuse of law.

It should however be noted that a prosecution mounted in this way does not correspond to the investigative standards of the Austrian criminal code, as this assumes that in the context of an investigation proceedings, the accused must at least be given the opportunity of making a statement regarding the allegation.

This right to make a statement cannot be discerned in the Indictment proceeding and the person affected in his questioning also credibly stated that up to the time of his arrest he had not known of any investigations or filing of a bill of indictment against him, which certainly confirm that the person affected was not given the opportunity of presenting exonerating statements or evidence in advance of this indictment being filed. This was indeed also not claimed by the requesting authorities.

The current prosecution that has been presented as the content of the extradition request was thus not preceded by an adversarial preliminary hearing, and the filing of the indictment itself has also not been subjected to judicial review, in the manner that occurs with a complaint proceeding.

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As in this case a unilateral trial can certainly be assumed, this does correspond with the standards of the Austrian procedural code. It is completely irrelevant in this context whether American prosecutors are obliged to objectivity or not, as they are in any case not able to re-assess the factual and legal situation objectively without questioning the person affected or the accused, after evaluating all potentially exonerating evidence as well.

Although therefore an indictment in the meaning of Article 10 (3) b of the Extradition Treaty exists, then this alone cannot support a reasonable basis for suspicion of the offence; in particular not if - as described above - a certainly raised level of evaluation duty exists with regard to the suspicion.

When evaluating the reasonable basis for suspicion, the extradition court must also take into account the ruling by the Upper Regional Court Vienna dated 29 January 2015 under GZ 19 Bs 182/14z, 19 Bs 183/14x, 19 Bs 184/14v.

Taking into account that this is a ruling in a domestic or mutual legal assistance case, which should be seen in any case independently from the extradition proceeding, this ruling does contain remarkable opinions which cannot be ignored in the extradition proceeding.

Thus is should first be explained that the conditions for account

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disclosures or the seizure of assets have different assessment standards than the reasonable basis for suspicion rn the extradition proceeding, and it is therefore not very relevant to the extradition proceeding, if requested account disclosures or applications for seizure are ultimately refused by a court.

As this domestic or mutual legal assistance proceeding, which was conducted by the Vienna public prosecution under file 615 St 14/14t is however based on the same set of circumstances, namely the bribery of Indian officials by the person affected and his corporate group, thus a connection certainly exists between these two cases, the rulings of the Upper Regional Court Vienna are also relevant tin the extradition proceedings to the extent that they affect the grounds for suspicion underlying the offences alleged against the person affected in the destination state.

Regardless of the fact that in this domestic proceeding the American authorities showed only moderate willingness to cooperate and responded only partially or not at all to requests by the Vienna prosecution for supplementary documents - a course of action that they repeated in the context of the extradition proceedings, as will be established hereafter, the Upper Regional Court Vienna stated in the context of an appeal ruling in the above-quoted ruling, that the *"appellants accurately submit that in particular with regard to the allegation of bribery of Indian officials, a reasonable basis for suspicion*

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cannot be discerned in the contested judgements.

But also the whole remaining content of the file does not offer a reasonable basis for such a suspicion, considering that only the indictment brought by a Grand Jury in the United States exists to support it, which however in the absence of any considerations of evidence or even just naming of the relevant pieces of evidence does not demonstrate on what the actual suspicion is based. The ordered investigation measure cannot therefore not rely on this set of facts, in the absence of an even simply cogent suspicion."

Although this ruling was passed in the context of a domestic procedure in which the person affected is charged with the allegation of money laundering, the Upper Regional Court Vienna unmistakably determined that on the basis of the whole file content there was no reasonable and also no simple offence suspicion.

It is also relevant here that the Upper Regional Court Vienna at the time of the judgement has already received the bill of indictment from the requesting authorities as well as the affidavits of the two special investigator, thus the evidence submitted to date in the extradition proceedings.

In consideration of the fact that also in the extradition proceedings the ordinary legal remedy of appeal leads to the Upper Regional Court Vienna and the latter will rule in the second and final instance over

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the admissibility of the extradition, the extradition court saw cause to submit supplementary questions to the American authorities;

also considering that this was set into motion by the ruling of the Upper Regional Court Vienna dated 1 August 2014 under GZ 22 Bs 103/14d, 22 Bs 110/14h, 22 Bs 111/14f.

Thus the appeal authority states on page 14 of the judgement that an opportunity can still be provided to supply a substantiation of the suspicion existing against the person affected that goes beyond the description in the indictment, potentially through the transmission of additional documents (witness interrogation reports, account statements, dummy or disguising contracts).

Thus with a note dated 21 July 2014 (ON 58) via the Federal Justice Ministry the American justice authorities are requested to furnish supplementary information regarding the extradition request.

In order to assess the reasonable grounds for suspicion, it was requested that the American authorities should give information on which person exactly were bribed in India and which offices these persons hold or held in the context of the licensing procedure in India (point a).

Additionally the American authorities were asked to disclose the identity of the two cooperating witnesses, whose statements massively and predominantly incriminate the person affected, and to show the connection that these persons had to the person affected or with the factual circumstances underlying the indictment (point b). This appeared to be necessary because the extradition documents and extradition

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request made it evident that the information of these two cooperating witnesses represents the foundation of the evidence against the person affected. Both in the bill of indictment of the American authorities and the affidavits of the special investig tors, reference was made in each case to the statements of these two cooperating witnesses, who however (initially) remained anonymous, which meant that for an assessment of the reasonable basis for suspicion it was at least necessary to know their identity in order to be able to evaluate their connection to the whole offence allegation.

Furthermore the American authorities were asked to show which persons were threatened or intimidated by the person affects, considering that the requesting authorities in item III of the indictment also accuse the person affected of having committed the sense of issuing a dangerous threat in the meaning of§ 107 (1) StGB.

In conclusion the American authorities were asked to explain what their reasons were for not executing an arrest warrant already authorised by the Regional Criminal Court Vienna on 1 November 2013, after this was issued upon an urgent request for temporary arrest.

In this context it should be pointed out that already at the end of October 2013/beginning of November 2013 the American authorities requested the temporary arrest of the person affected in the country [Austria], as they suspected that the person affected was in Vienna on 4 November 2013. On the basis of this request the Regional Criminal Court Vienna authorised a national arrest warrant, and as can be seen from the

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file, the security authorities prepared the execution of this arrest warrant.

A few days after this, shortly before the planned arrest, it was requested in an urgent message that the arrest not be executed, where the reason for this course of action were not clear and were also not disclosed.

The current newest request for arrest, which was finally completed, was exactly the same in terms of content as the one from the end of October 2013 and it was not evident from the file, which circumstances occurred which could justify the actions of the American authorities.

Therefore the American authorities were asked to demonstrate or explain it, also due to the argument that the extradition was politically motivated and that this political motivation was also discernible there.

By note dated 24 July 2014 (ON 59), the Federal Justice Ministry sent the request for supplementary information m support of the extradition documents to the American authorities.

With a letter dated 20 August 2014 (ON 68), the answer from the United States Department of Justice was received.

In this letter (AS 15 ff in ON 68) the requesting authorities explained in summary that they had gathered evidence that indicated that the bribes had been paid to Indian public officials on a federal state level. These had been provided by companies that were under the control of Dmitry FIRTASH and FIRT ASH had authorised the payment of these

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monies (AS 15 in ON 68).

Additionally in this letter those persons who were recipients of the bribe payments in India were listed and as evidence for this in particular the statements of the "cooperating witnesses 1 and 2" were emphasised, which created the impressions that it had been above all those two witnesses who were available to the American investigative authorities as the basis for evidence.

In addition one single page that was part of a business presentation was submitted or sent as Annex ./A (AS 25 in ON 68), which comes from the company that was transmitted in the bill of indictment as "Company *./A".*

The requesting authorities themselves said that this was *"part of a larger presentation, which was drawn up in 2006 in the context of an assessment of the project and the planned business relationship to FIRTASH and BOTHLI TRADE AG by* ***Boeing."***

In AS 17 in ON 68 below again those officials who were allegedly involved in the bribe actions were listed by name.

Additionally the American authorities claimed to have e-mail correspondence which was obtained after a search of the *"email account of a co-conspirator".* It was not mentioned who this co-conspirator was.

It was also claimed that the United States had records of money transfer which reflected numerous payments to the company of an Indian office-holder, and that this confirmed the payments of these bribes (AS 18 in ON 68). It was not stated what amounts were transferred from

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which accounts by which person or company,

In AS 19 in ON 68 an email sent by Sudheekar REDDY to Andras KNOPP is mentioned, in which *"he noted that the total amount that he had agreed with the mining ministry was 1. 65 million US dollars, and that the minister would receive 70 million rupees out of this amount and a further 4.8 million rupees would go to office-holders. The total amount of 74. 8 million rupees according to the exchange rate of October 2008 corresponds to around 1.6 million USD."*

It was not stated nor claimed, what connection this email had to the person affected himself.

Furthermore it was confirmed by an email that payments of 10 million rupees had been made to Sri LAKSHMI. It was not stated who this email was from or who the recipient of this email was.

For further explanations, reference is made to the content of ON 68.

Regarding the identity of the two cooperating witnesses, the American authorities claimed that the disclosure of their names would put their lives at risk and it was requested that this should be refrained from. For this reason, their "statements" were sent in a closed, sealed envelope and it was requested that if this were opened and became part of the file, it should be excluded from the file inspection.

Only if the court thought it was absolutely necessary should the

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American authorities be notified rn advance, in order to make security arrangements for the two cooperating witnesses.

In this context it is noted that this sealed envelope was opened and examined by the judge, however subsequently it was kept in the safe of the Regional Criminal Court Vienna, as it would not have been defensible to exclude these documents from the file inspection, thus not being able to form part of the file.

In order to obtain additional clarification on the procedure, these were provisionally locked away.

Under Item IV the American authorities answered the question of why the original arrest warrant request was withdrawn without reasons.

Here they explained that the considerations of the US enforcement authorities in connection with the timing of the arrest had no association to the evidence against the person affected in the US (AS 22 in ON 68). For the criminal prosecution in the US or the evidence for it, it was therefore not relevant whether the person affected was arrested in November 2013 or in March 2014.

Nothing had happened srnce the bill of indictment in June 2013 which could have reduced the validity of the bill of indictment or the strength of the evidence against FIRTASH.

The question of why the arrest warrant was withdrawn remained consciously unanswered by this answer, as the question had been unambiguously about why the arrest warrant was withdrawn.

The American authorities however merely answered with which

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reasons had not caused the arrest warrant to be withdrawn.

It should also be noted that the American authorities did not answer the question regarding which persons were bribed "by the person affected specifically".

This behaviour by the requesting authorities did not exactly allow the case-by-case consideration of the offence allegation to appear any more "substantial".

A request regarding the certainly remarkable behaviour of the American authorities, regarding the withdrawal of the request for temporary arrest, was answered in a manner that made these actions by the US authorities appear even more dubious. The impression was being given to the court that specific questions were not being answered, an answers with "place-holder empty phrases" were being provided after reformulating the question.

In the assessment of the individual case this 1s certainly not tolerable nor satisfactory.

(Although in its wording, compared to later letters from the US authorities, diplomatic and respectful).

In any case the answer of the American authorities gives the impression even more strongly that the evidence gathered relies predominantly on the statements of the two cooperating witnesses in the US, considering that the only document transmitted (Annex ./A), a business presentation which was drawn up by the US company Boeing, does not represent clear evidence which could support the indictment.

Also the listed evidence obtained in the context of house searches and telephone surveillance was not listed specifically enough to

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constitute a reasonable, cogent basis for the allegation against the person affected. For one because this for the most part did not list who the sender or recipient of various email messages was, or which companies were involved in payments and also the existence of email messages from or to the person affected himself was not claimed. Such documents were in any case not submitted.

Assuming that the emails "quoted" in the response of the US authorities are those which most incriminate the person affected, these emails in any case do not demonstrate a legitimate basis for suspicion.

Those allegations which refer to. the person affected himself, were thus taken from the statements of the two cooperating witnesses, or were founded in those statements.

In order to allow the content of the closed, sealed envelope to become part of the file, the requesting authorities were asked via the Federal Justice Ministry whether there were any objections to include the content or the statements of these two witnesses in the file anonymously, in order to at least be able to incorporate the content of the statements or of the alleged statements into the assessment of the admissibility of the extradition (ON 73).

The answer to this request was received on 13 November 2014 (AS 5 fin ON 77), in which the America authorities communicated that "after serious consideration" they would not agree to allow the content of the sealed envelopes to come part of the file, so that the person affected

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could also have the opportunity of viewing it. In addition the letter contained various legal arguments, in particular regarding Article 10 of the Extradition Treaty.

The court then decided not to take the whole contents of the sealed envelope into the file.

It was also intended to return the original of this to the American authorities, as for the assessment of reasonable basis for suspicion, which is a prerequisite for the admissibility of the extradition, on the one hand the person affected must be given the opportunity of making a statement on it (this again assumes inspection of such documents) and also the court must refer to the content of these documents in the reasoning for its judgement.

The confirmation of a reasonable basis for suspicion by the court assumes that such findings also have a foundation.

Findings which "cannot" be substantiated, because those documents which would substantiate such findings are not part of the file or cannot be named, may not be issued.

It would therefore also not be comprehensible to permit these as forming part of the content of the extradition documents.

Although a time-limited exception from file inspection could certainly be justified, this cannot last until the (legally binding) termination of the extradition proceeding or until its judicial finding.

As the proposal of the Austrian court to add these to the extradition documents in anonymised form, was refused by the American authorities,

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they will remain until further notice in the safe of the Praesidium of the Regional Criminal Court of Vienna.

As the Austrian extradition court did and does not understand itself an institution doing the US' s bidding and it is the US making an extradition request, it was therefore intended to return these documents, which had been sent to the Austrian court but whose content had to remain secret, in full and in their original to the requesting state.

On 7 January 2015 (see AS 43 in ON 1) the deciding court was given by the Vienna Prosecutors' Office personally a message from the US authorities (Department of Justice of the United States) with the request to release the closed envelopes to be viewed and entered in the file.

It becomes clear from this document (AS 7 in ON 80) that there was obviously a (considering Section 34 ARHG, certainly remarkable) meeting on 5 December 2014 between representatives of the Federal Ministry for Justice and representatives of the US authorities.

Although this meeting itself as well as the content of the meetings held there and the attendees are entirely unknown by the deciding court, it becomes clear from the correspondence that the attendees in this meeting obviously "agreed" that, and under what circumstances, these

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previously closed sections of the extradition documents may be included in the file. They were therefore handed over to the Vienna Prosecutor's Office personally and added to the file (ON 81).

Evidently as a result of the agreement made in the above meeting, the person affected was questioned by the prosecutor in charge on 22 January 2015, i.e. "instructed" that the intimidation or damnification of a (US) witness constitutes a crime and every person involved will be subject to criminal prosecution (ON 83).

If the previously closed or sealed documents are now viewed, a summary of the two anonymous witnesses 1 and 2 now mentioned by name is presented.

As regards the content of these documents, reference is made to AS 3 et seq. in ON 3 in ON 81.

In doing so, it becomes clear that these are not records of witness interrogations presented by the witnesses or confirmed by the witnesses themselves.

In fact, this is a report or a message from the US federal attorney Theodor Fardon Zachary, in which he summarises the statements of the two witnesses. Noteworthy in this context is the fact that it is hardly surprising that the wording "... the witness will ***likely testify"*** was chosen for both witnesses.

Whether relevant records of such witness statements exist or to whom these witnesses may have testified is not stated.

It is noted in this context that such documents are comparable with file notes of security officials, which can be found in various event

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reports, in which these officials summarise in brief the statements made to them by witnesses. The value as evidence of such file notes is, however, minor and could alone not result in a conviction within the framework of an Austrian criminal proceedings (and in the event of correct application of the law probably also not in charges).

For this reason, the Austrian court made a second request with the US authorities to clarify this matter.

As already noted on several occas10ns, the evidence against the person affected - if it even relates to the person affected specifically - is based, in particular, on the statements of the two cooperating witnesses.

An assessment of the sufficient susp1c1on can therefore only be carried out, in particular in this special constellation (see above), if the content of the statements of these cooperating witnesses can be verified.

Although this does not mean that if records are presented their value as evidence or credibility needs to be assessed by the extraditing court (this would result in an excessive assessment of the suspicion, which may not be carried out within the framework of an extradition proceedings in any event).

However, in any event, the content of the witness statements needs to be known by the extraditing court in order to understand the suspicion that is noted in the bill of indictment and based, in particular, on these

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witness statements, especially as no relevant and convincing evidence or documents were submitted in addition to these statements, which could replace them.

The affidavits of agents in the United States - as in Austria - cannot replace such evidence in any event, regardless of whether this is the case in the destination country or not; finally, the sufficient suspicion will need to be assessed in accordance with the provisions of the Austrian Code of Criminal Procedure and not those of US law, considering that the extradition proceedings is an Austrian domestic proceedings.

A fresh, final request was therefore sent to the US authorities, in which they were given the opportunity - while stating the issue that presented itself in accordance with the court - to supplement the extradition documents or to answer questions that continued to be unanswered (ON 91).

As such, the US authorities were agam given the opportunity with this note (ON 91) to answer the questions regarding the reasons for the withdrawal of the original request for arrest, which had remained unanswered in their statement of 20 August 2014. The US authorities were separately informed in this context of Article 4(3) Extradition

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Treaty and the submission of the person affected with the thrust that the extradition request was politically motivated.

Furthermore, the US authorities were requested to send copies of the records of the witness interrogations of the two cooperating witnesses.

As the extradition court already assumed at this moment in time that the US authorities were not in possession of such records, they were notified or offered that, if the transfer of the records is not possible, the court intends to question the two witnesses by video conference during the extradition hearing.

In this context, it is noted that the questioning of the two witnesses was not intended to verify the truthfulness of any statements, but merely to determine whether the two cooperating witnesses could actually also go on record with the statements they - according to the extradition documents - would "likely" make in the way set out in the bill of indictment and the supplemental extradition documents from the US authorities.

To assess the sufficient susp1c1on, it was therefore the intention of the extraditing court to examine whether the two cooperating witnesses actually made or will also (in the future) make the statements incriminating the person affected, in particular, although this was the main incriminating evidence of the US authorities, there were no interrogation records in this respect.

This request was - via instruction from the Federal Ministry for Justice, supplemented by a copy of the submission of the person affected

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on the political motivation of the extradition request - sent by the Federal Ministry of Justice to the US authorities.

Their reply was received by the Vienna District Court for Criminal Matters on 10 April 2015 (ON 98).

In it, the US authorities initially note on the withdrawn request for arrest that when deciding on when and where the arrest of FIRTASH should be requested "jurisdictions were taken into account that were known for carrying out extradition proceedings promptly and not prone to efforts to disrupt the ordinary court extradition process (sic!)".

Efforts were made in vanous countries outside of Austria to find and detect the person affected. In November 2013 information was received that FIRTASH may travel through Austria. The United States withdrew their request for preliminary detention a couple of days after sending it for *"strategic reasons"*, which argued for attempting the arrest a couple of days later.

In this context, it is expressly noted that it was not set out what "strategic reasons" are meant to be for the withdrawal of the request for arrest.

Furthermore, the claim of the person affected, according to which the extradition proceedings were politically motivated, was contested.

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In particular, however, (AS 9 in ON 98) it was conceded that the requesting authorities are not in possession of records of the questioning of the cooperating witnesses. Only detailed reports on the questioning of these witnesses are available.

As regards the questioning of the witnesses within the framework of the extradition hearing as intended by the court, the US authorities, i.e Mary D. RODRIGUEZ, noted that "such a request is both unprecedented in our extradition relationship with Austria and to our mind incompatible with the terms of the extradition treaty".

In explanation of the law, the requesting state notes that Article 10 with its terms specifies that the requesting state provide a written description of the facts. Direct witness statements are not only a deviation from the previous extradition practices, this also constitutes a risk for the witnesses.

It was not explained what risk such statements apparently constitute; statements they have already (allegedly) made to US agents, meaning that the latter then filed charges against the person affected on their basis.

Furthermore, it was noted that the US authorities did not believe that the statements of witnesses "are necessary" (sic!) within the framework of an extradition proceedings, as this would result in certain pieces of evidence being perceived either detached from their context or in a ***"small court hearing" (sic!)*** in an incorrect jurisdiction without a full explanation of the evidence.

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In addition, the witnesses may lose during the extradition proceedings their right not to make a statement that could be used against them in other countries.

In this context, it is noted that it was not explained what difference it makes if witnesses make such statements within the framework of the Austrian extradition proceedings or within a framework of a US criminal proceedings in the event of an extradition of the person affected.

It was also noted that the requesting authorities delivered information to a degree that goes far beyond what they had ever delivered in the past in order to support the extradition request to Austria.

Finally, the US authorities complained that the Austrian court apparently took ***"unseen measures regarding the taking and explaining of evidence„.***

The person affected or his defence lawyers should not be permitted to conduct those in-depth investigations, which he would be granted in any US criminal proceedings, in the extradition proceedings.

Why the person affected should not be permitted to work towards to invalidate a sufficient suspicion was not explained.

In this context, reference is agam made to the above increased assessment obligation within the framework of an extradition proceedings with the United States of America.

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The US authorities were not willing anyway to agree to the interrogation of the two cooperating witnesses in any shape or form and rejected it categorically.

It is the responsibility of the potential target state to send sufficiently extradition materials or to reply to any questions sent to it or not. However, it is also the responsibility, and this on an exclusive basis, of the Austrian authorities to interpret the content of the extradition treaty, assess what documents substantiate a sufficient suspicion of a crime or not and, finally, to rule whether this is given or not.

Legal instructions of requesting states regarding how an Austrian authority must (in any event) rule are certainly redundant and not required nor suitable to substantiate sufficient suspicion of a crime.

On the basis of these circumstances, as regards the existence of a sufficient suspicion of a crime, which is the requirement for extradition, the following must be taken into account:

As explained above, the principles of the formal assessment principle, which applies in (intra-)European extraditions, and the assessment of the suspicion of a crime are intended on a limited basis only, and not applicable here.

Although for the extradition proceedings with clear extradition documents the existence of a sufficient suspicion of a crime is assumed,

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and the assessment of the suspicion of a crime does in no way need to be carried out as, for instance, in a domestic proceedings (be it to impose pre-trial detention, an urgent suspicion, be it to determine elements of the circumstances within the framework of a conviction, near certainty), in the relationship with the United States of America, an assessment of the suspicion of a crime must be carried out clearly on a case-by-case basis from the wording of the extradition treaty.

As such, under Article 10(3)(c) of the extradition treaty, it is intended that documents must be annexed to an extradition request for criminal prosecution that contain sufficient information showing a sufficient basis for the assumption that the person to be extradited committed the criminal offence. As it becomes clear from the government submission (page 21), the legislator accepts as sufficient evidence that substantiates a sufficient suspicion and strict requirements are not made here.

The level of these requirements of this obligation to provide evidence is, however, in the opinion of the court, to be assessed on a case-by-case basis. The greater the doubt about the conclusiveness of the suspicion, the more vaguely they are made and the more significant the consequences of an extradition for the person affected, the higher they are to be located.

As already shown, this is a domestic proceedings being conducted in the USA, in which a Ukrainian national is being accused of having

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bribed officials in India in order to drive or bring about titanium mining projects India and a nexus with the target state can only be substantiated on the basis of a wide-ranging geographical jurisdiction of the US code of criminal procedure.

As on the basis of the penalty a term of imprisonment of up to twenty years the consequences for the person affected in the event of extradition are in any event considered to be grave and the explanations of the requesting authorities in the bill of indictment presented are to be considered to be certainly vague, at least regards the specific accusation against the person affected, a higher assessment standard applies in this extradition proceedings.

The documents submitted by the requesting authorities within the meaning of Article 10(3)(c) Extradition Treaty are largely limited to the indictment brought in the US, the affidavits of the two special agents as well as a document, which turned out to be a business presentation of Boeing (Annex ./A).

Further documents or files, apart from the explanations of various agents, were not submitted.

The fact that documents can be submitted is certainly known by the authorities, considering that they provided files and it is not the task of the Austrian court to demand from the requesting state specific files

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within the framework of the extradition proceedings, considering that the extradition court (in lack of access to the file in the US) is also not aware what documents could be available.

As such, it is the responsibility of the requesting authorities to provide those documents that can substantiate from their perspective a sufficient suspicion.

The United States of America was given sufficient opportunity to do so.

It must also be noted that it becomes clear without doubt from the extradition documents that the allegations of the indictment are based, in particular, on the statements of the two cooperating witnesses in the US.

As such, it suggested itself to request the record of the interrogation of these two witnesses and the US authorities admitted in this context that such statements do not exist.

Written reports, even if they may be detailed, about any interrogations of these witnesses can in no way replace these, as these are summaries of the agents not authorised by the witnesses themselves, which may substantiate a simple susp1c10n at the start of an investigation, but by no means have the same level of evidence as a witness statement.

In this context, reference is again made to the ruling of the Vienna Higher Regional court of 29 January 2015, 19 Bs 182/14z, 19 Bs 183/14x, 19 Bs 184/14v, in which it was ruled that, in particular *regards the allegation of bribing Indian officials, a sufficient substantiation of the suspicion cannot be found in the contested rulings, **but the entire remaining content of the file also fails to offer a sufficient basis for such a suspicion, considering that only the***

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charges filedby a special jury are given in this respect, which, however, fails to show what the specific suspicion is based on given the lack of any explanations providing evidence or even a designation of the relevant evidence. The investigation measure ordered can therefore not be based on these facts for the lack of even an easily understandable suspicion.

This opm1on of the Vienna Higher Regional Court is correct, although it was released within the framework of domestic proceedings, whose content was the allegation of money laundering in Austria.

Nevertheless, the Vienna Higher Regional court had at its disposal the US indictment and the affidavits of the special agents in these proceedings too, and the Vienna Higher Regional Court correctly failed to detect any sufficient suspicion that can be substantiated; indeed doubt was cast on a simple, clear suspicion of bribing Indian officials.

As the sole pieces of evidence designated, which are the basis for the indictment, were the two cooperating witnesses, it suggests itself to request the records of interrogating these two witnesses in order to thereby easily understand a sufficient suspicion without any problem. An assessment of the validity of these witness statements was not carried out in any event, considering that this is to be the subject of any criminal proceedings in the US.

The fact that such records of the statements of the witnesses do not

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exist, was reported to the extradition court within the framework of the extradition proceedings shortly before the extradition hearing.

As such, it was necessary and the US requirements were complied with by the extradition court to the extent that the two cooperating witnesses were asked whether they actually made these statements or will continue to do so. If their answer had been yes, all further explanations on the sufficient susp1c10n with reference to the proceedings in the US and the assessment of the evidence to be carried out there would have become irrelevant.

However, this was categorically rejected by the requesting authorities.

The requesting authorities therefore failed to submit to the extradition court sufficient documents that could conclusively substantiate a sufficient suspicion.

The extradition court complied with the requesting authorities' request to the extent that it obtained (more or less) suitable evidence itself by "sending" the offer to itself interrogate these two witnesses within the framework of the extradition hearings.

A procedure to which the extradition court would have otherwise been authorised under the extradition treaty but by no means obligated, it is the responsibility of the requesting state to submit suitable documents.

The legal opinion of the US authorities, which ultimately resulted in this "offer" being categorically denied, i.e. that such an approach was

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impermissible in its meaning, cannot be understood.

As such, in the process of an extradition proceedings, under the provisions of the ARHG, it is certainly possible and permissible also if the (strictly) formal assessment principle is given to include any exonerating evidence, which can be carried out quickly and without further delay *(Goth-Flemmich* in WK ² ARHG Section 33, marginal note 5).

If it is possible anyway and permissible to include exonerating evidence, it is naturally also possible to directly discuss incriminatory evidence directly within the framework of an extradition hearing. Indeed, this must also be possible, if (as in extraditions with the United States of America) the formal assessment principle is not applied.

It is therefore not clear where the US authorities see the impermissibility of this approach.

Regardless of the fact that the legal opm10n of the requesting authorities is entirely irrelevant for the extradition court (separately from this case), the US authorities were also unable to present any objective arguments. In fact, they refer to the customary indications by relating to the "previous extraditions" and referring to the court requests as "extraditions".

What stands out here is, above all, the fact that the US authorities clearly do not like the approach of the extradition court because (and openly admit this) because it allows casting doubt on the evidence. If the applicability of the strictly formal assessment principle (continental European legal tradition) were to be approved, this argumentation would

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make sense. Precisely this strictly formal assessment principle, which is standardised in intra-European matters, however, was ruled in relationships with the United States, indeed at the request of the United States itself.

As such, further requests for supplementation of the extradition documents were not made, as the US authorities explained clearly in their statement of 3 April 2015 (AS 9et seq. in ON 98) that in their opinion they had already provided information *"to a degree that goes far beyond what we have ever provided in the past to support an extradition request submitted to Austria".*

The documents requested by the court or the taking of evidence provided was also referred to as an *"unprecedented measure as regards the collecting and announcing of evidence".*

As the clear conclusion can be drawn from these explanations of the US authorities that they are not willing to provide further documents, further requests for supplementation to them were not to be made. What is more, it is also not the task of the extradition court to indeed urge the requesting authorities to submit them, there is merely an obligation to inform the requesting authorities in the event of incompleteness and to provide them with the opportunity to improve the documents or other

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evidence in question.

The extradition court certainly complied with this.

Although courts in the United States also consider as sufficient affidavits of the prosecutor in charge to press charges or grant extraditions in order to substantiate a sufficient suspicion for an extradition (see government submission, page 21), this is, on the one hand, irrelevant for an Austrian extradition proceedings, as there is no reciprocity obligation in this respect.

On the other hand, this circumstance must also be assessed on a case-by-case basis and an affidavit of a prosecutor may be sufficient in the event of crimes of any confessing persons affected.

However, not in this specific case.

As the US authorities were unable to substantiate a suspicion within the meaning of Article 10(3)(c) of the extradition treaty on the basis of the extradition documents, the existence of a sufficient suspicion must be dismissed and the extradition rejected for this reason already.

However, as it 1s at the discretion of the US authorities to also subsequently submit additional documents within the framework of the appeal proceedings against this ruling (in lack of a ban on novelty) that

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are suitable to substantiate a sufficient suspicion, the further submission of the affected person, claiming that the extradition was politically motivated and must therefore be dismissed, is to be subjected to a more detailed assessment.

A further possible obstacle to extradition, which reqmres a more objective consideration, is already that of the political motivation.

To this end, the person affected, i.e. his defence lawyers, noted (summarised very briefly) as noted above that the actual motivation of the extradition request from the US authorities is of a commercial and geopolitical nature.

The person affected is an exceedingly influential person in Ukraine, both in the commercial and in the political sectors. The extradition request or the request for the arrest of the person affected by the US authorities aimed merely to take the person affected, who was obstacle to the interests of the US in their view, out of the political equation, at least temporarily. As such, according to the US authorities FIRTASH is a political factor who was against an association of Ukraine with the West (European Union, USA), meaning that is he considered to be pro-Russian.

In particular, he is a commercial and political opponent of Yulia TYMOSHENKO, who is supported in the US, and the US authorities

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want to achieve with their extradition request, on the one hand, that those candidates preferred by the US do not lose the struggle for Ukraine;

On the other hand, in order the exert pressure on the allies of the then (end of 2013) Ukrainian Prime Minister, to encourage him to join the EU Association Treaty and to fully withdraw from the influence of Russia.

The US authorities, requested to provide a statement on this submission, they firmly denied these motivations of the extradition and explained that their efforts to arrest the person affected were in no way politically motivated. Indeed, the facts recorded showed that the investigations, criminal prosecution and arrest of FIRTASH were based on strong evidence for crimes, which was collected within the framework of a five-year investigation proceedings, i.e. long before the political events in Ukraine in2013.

Furthermore, the co-defendants of the person affected were not originally from Ukraine and were in no way involved in Ukrainian politics. Every indication that the United States had planned (starting from 2008 and continuously until 2013) to investigate and arrest the person affected and five other persons from India, Hungary and Sri Lanka due to FIRTASH' s alleged role in unforeseeable political events, which occurred six years later, lacks any basis.

Legally, it must be explained in this context that, in accordance with Article 4(3) of the extradition treaty, extradition is not granted if

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the authority in charge of the requested state rules that the request was made for political reasons.

This provision, which can also be found in numerous treaties with other EU member states, therefore opts for a different solution than that of Section 14 Z 2 ARHG, where a proportionality assessment needs to be carried out and the criminal nature of the relevant act compared with the political motives and extradition only granted if the criminal nature of the act outweighs the political motives.

The extradition treaty being applied here specifically does not follow this solution, but the requested state may already dismiss extradition if the authority in charge arrives at the opinion that the extradition request is also politically motivated (see government submission on the extradition treaty, page 19).

The extradition treaty therefore governs that an extradition is rejected if - regardless of the suspicion and regardless of the act itself - the motives resulting in the filing of the extradition request are (at least also) of a political nature.

As there is no highest-instance jurisdiction domestically in this respect, advance questions must be discussed.

On the one hand, it must be examined whether the term "political motivation" merely refers to political interests in the narrower sense, i.e.

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rn particular domestic politics aspects are to be considered alone or foreign policy, geopolitical or economic policy motivations contradict extradition.

On the other hand, it must be considered what standard of evidence needs to be applied for such an assumption. It is sufficient - in line with the principle of doubt - that a political motivation cannot be ruled out or this needs to be proven with a likelihood that is nearly certain.

Finally, it must also be considered whether the relevant person affected can have such political weight, in particular in foreign policy, that an extradition request can even be politically motivated.

The extradition court is of the opm1on that geopolitical and economic policy motives contradict extradition of this motivation is also the basis of the extradition request.

If one is guided by the meaning of this regulation, i.e. that extradition requests that are at least also politically motivated are to be dismissed, it must be assumed that it was the purpose of this item in the treaty to rule out extradition requests being filed unlawfully. In this sense, it is to be ruled out that a person is extradited to another state because the requesting state has at least other interests than only those of criminal prosecution (of this person).

An extradition proceedings or the carrying out of an extradition can and may have the sole purpose of convicting a person of an allegation

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who is being suspected of a criminal act.

If a state, even if only partly, has other interests in this person, this misses the actual purpose of an extradition proceedings and an extradition request is then used to achieve other goals.

The logical consequence of this consideration, however, is also that m such a case the requested state is also indeed abused for other interests than those of serving criminal justice.

As this certainly contradicts the purpose of extraditions, in the opm1on of the court it can remain without any relevance whether the political motivation - if such is determined - is of a domestic policy, foreign policy, geopolitical or economic policy nature.

As such, it is necessary to conclude that every type of political motivation must result in the extradition request being dismissed.

Taking political influence m judicial rulings contradicts the principles of a democratic system and the strict separation of (official) powers is the basic principle of a functioning judicature.

Similarly, criminal proceedings may not even be abused to pursue political objectives.

This is likely the basic thrust of the above regulation of the extradition treaty, for which reason the extradition obstacle of "political

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motivation" can refer to all political interests, considering that it makes no difference whether a criminal proceedings (and in this case an extradition proceedings) is abused for domestic policy, geopolitical, economic policy, foreign policy or simply for power policy interests.

As regards the standard of evidence, it is likely sufficient that the person affected shows credibly that the extradition is also politically motivated.

Even if the mere claim of a politically motivated proceedings can suffice, it can also not be accepted from a person affected that he or she prove this in such a way that it can be determined with a likelihood that is near to certainty.

This will not be successful, on the one had, in hardly any case, meaning that the regulation applied would for that reason already have to be considered as "dead law", and the assessment standard is also, on the other hand, located at a high level in asylum law.

In addition, it must be noted that - as discussed in detail above - in order to confirm a sufficient suspicion (as such a "positive" extradition requirement) sufficient documents need to be submitted in order to confirm the suspicion.

For instance, also for "negative" extradition obstacles, it will likely have to suffice to submit documents or evidence of an extradition request being at least also politically motivated.

Finally, light needs to be shed on the figure of the person affected

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and the question examined whether he or she can play such a role in political considerations in order to justify the approach of the state within the meaning of Article 4(3).

In this respect, within the framework of the extradition hearings, a comprehensive process of taking evidence was carried out which included the questioning of some witnesses. On the basis of this credible and clear information, which could be brought in line with the research of the court (the person affected is a person of public interest and the profile of his figure can also be found in publicly accessible sources, which can certainly be considered to be reputable), the following is stated on the profile of the person affected:

Born on 02 May 1965, Dmitry FIRTASH is a Ukrainian businessman and investor.

From sources such as Wikipedia, but also from other publicly accessible sources of information that are deemed to be reputable, the following basic data can be ascertained without doubt:

Since 2000, Dmitry FIRTASH has been active in the natural gas business, amongst other things as a broker for Russian-Turkmen gas deliveries to Ukraine.

In 2001 he established Eural TG, a company based in Hungary, which processed transit transactions for natural gas deliveries from Russia to Ukraine. In 2004 this company was wound up.

From 2005 to 2009, RosUkrEnergo (RUE) was the broker for gas

deliveries of Russia to Ukraine, while the affected person held 45% of shares in this company.

Dmitry FIRTASH already had a good agreement in place with the former Ukrainian President Viktor YUSHENKO and was long perceived to be an influential ally of the former President Viktor YANUKOVYCH.

In turn, the former Prime Minister Yulia TYMOSHENKO is considered to be his opponent.

The person affected can be considered to be one of the richest men in Ukraine, a large part of his companies are now summarised in Group DF, which is based in Vienna. His assets were estimated to be USD 10 billion as at March 2014.

On 17 February 2012 Dmitry FIRTASH was appointed Chairman of the national trilateral Social Economic Council, an advisory committee of the Presidential Administration of Ukraine.

On 1 July 2013 Dmitry FIRTASH obtained 100% of shares in Intermedia Group Limited. He thereby became, amongst other things, the owner of Inter TV channel, which is deemed to be the most popular channel in Ukraine.

Beforehand, he controlled 50% of Intermedia Group.

It is also clear from publicly accessible sources that this group has eight TV channels, including the above Inter TV, a Ukrainian TV channel that broadcasts in two languages and has the largest range in Ukraine.

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The person affected is also the Co-Director of Ukraine's social partnership and contact of ILO.

Since 2010, he has headed up the Association of Employers of Ukraine (FEU), which represents 8,500 members and more than 5 million employees.

The person affected can certainly be referred to as an oligarch, and the above list shows that he is certainly an influential figure, at least in Ukraine or in the Ukrainian realm.

As a rule, it must be assumed that if an extradition request is also submitted to pursue political goals, the person to be extradited must be a figure who has such political impact – in whatever shape or form – in order to entice a state to incorporate political considerations in acts of criminal prosecution.

It must therefore be explained whether the person affected is "merely" an influential figure or also a political figure, in particular in Ukraine and, if so, to what degree this political influence manifests itself.

An overview of the conditions or history of Ukraine must be provided as an introduction to this end:

In this respect, we refer to the following findings, in particular the

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expert report of Richard SAKWA (ON 114), although this information can also be derived from publicly accessible sources following more detailed research.

Although Richard SAKWA is a "private expert", who was commissioned by the person affected to provide an expert report, it must be assumed that the information he provides, in particular regarding the events and conditions in Ukraine, is correct.

Finally, Richard SAKWA is – this can be verified in numerous public sources –a professor for Russian and European politics at the University of Kent in England.

His area of expertise is currently Russian, Ukrainian and Eurasian politics and he explores further European questions of current international affairs.

Under his name, numerous studies of Russian politics have been published and a book "Russian Politics & Society" (published in London and New York, most recently in 2008) is used at numerous universities about Russian politics, including Harvard, Yale and Oxford, as a textbook.

Furthermore, numerous publications by SAKWA can be found in internationally recognised media.

Although it cannot be verified whether he is involved as an expert in extradition and asylum applications for Russian nationals in the United Kingdom and Cyprus, as stated in AS 5 in ON 114, it can certainly be assumed that SAKWA is a figure with the relevant expertise, meaning that his information or explanations on Ukrainian history or

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Ukrainian politics can be considered to be ensured and correct and based on the facts, "although" he was commissioned with drawing up the expert report by the person affected.

Ukraine became independent in 1991 and every election has been associated with crises and disputes since.

The first President of the Republic to be freely elected was the former head of the Ukrainian Communist Party, Leonid KRAVCHUK, and he remained in office until 1994.

The election in the following year in 1994 heralded in the tensions that went on to dominate all presidential elections until and inclusive of 2014.

This is largely down to the tension between the south and east.

The reason for this is mainly that there were two models of Ukrainian independence in 1991, which were (and are) in conflict with one another:

on the one hand, the monistic model, whereby the Ukrainian state belongs to Ukrainian nationals, whose key task is to "nationalise" the political system, for instance by Ukrainian becoming the sole national language and other such measures.

This is pitted against the "pluralistic model", which recognises that the Ukrainian state has a complex history and heterogeneous ethnic composition and that this must find expression in the constitution, in

particular that Russian be permitted as the second national language.

This internal schism in Ukraine results in half the population looking "east", while the other half is guided by the "west".

The first President of Ukraine, Leonid KRAVCHUK, was considered to be more western-driven (like Mikhail GORBACHEV, he adjusted to the new political circumstances), while he was faced with the "pro-Russian" candidate Leonid KUCHMA in the next elections in 1994, who finally won the election and was also re-elected for a second term in office in 1999.

(Under the Ukrainian Constitution, a presidency is limited to two terms in office.)

In the 2004 election, Viktor YANUKOVYCH and Viktor YUSHENKO ran against one another, the latter as the candidate of the radical nationalists, who had a run-off election in a second ballot.

The official result of the second ballot on 21 November 2004 declared Viktor YANUKOVYCH as the winner, but this result was accompanied by major allegations of fraud, for which reason the masses assembled on the Maidan in Kiev to protest.

This protest movement was supported by oligarchs, who provided food, tents, toilets and the relevant reporting in the media (AS 37 in ON

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114).

These protests were called a so-called "coloured revolution" and the orange colour and flags accompanying these protests are still in good memory, given that the media reported widely about it throughout Europe.

The protests of the Orange Revolution finally forced through a third emergency ballot, in which Viktor YUSHENKO was the winner on 26 December 2004.

Despite the mobilisation of the masses or the enthusiasm for the victory of Viktor YUSHENKO, the political everyday life in Ukraine became no less conflict-prone.

The First Prime Minister, who was appointed by State President or Prime Minister YUSHENKO, was Yulia TYMOSHENKO, known as the Gas Princess in reference to how she became rich in the years after 1990 from energy deals. She was Prime Minister of Ukraine from 24.01.2005 to 08.09.2005.

However, it soon became clear that the collaboration between YUSHENKO and TYMOSHENKO was not working smoothly and the team finally developed into a personal feud.

For instance, YUSHENKO appointed in 2006 his former vial YANUKOVYCH as his Prime Minister after the parliamentary election, as his Party of Regions had emerged as the strongest force from the parliamentary elections.

YANUKOVYCH, who was accused of large-scale election fraud in the dispute of the election with YUSHENKO as recently as 2004, which

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ultimately resulted in the Orange Revolution, was now politically rehabilitated and the Prime Minister of his former adversary.

Richard SAKWA explains in his expert report in a clear and understandable manner that a so-called oligarch system was also established in Ukraine over these years, in particular in connection with gas deliveries, which doubtless – to this date – constitute a major factor not only in Ukrainian, but also in European politics if not global politics.

One of these oligarchs, who managed to take centre stage in this period in addition to Yulia TYMOSHENKO, was Dmitry FIRTASH, the person affected.

As such, he was viewed – another fact that is known from numerous publications, media reports and the expert report of Richard SAKWA – as an opponent of Yulia TYMSHENKO, initially in the area of gas trade.

However, in 2009 with the presidential election of 2010 approaching, the person affected became more active, also politically, albeit always remaining in the background, and his aim was to prevent a (further) presidency of Yulia TYMOSHENKO, who was running for the office of State President.

As such, he supported during the presidential election campaign, which was heading for a stand-off between Yulia TYMOSHENKO and Viktor YANUKOVYCH, the latter, while it must be assumed that he

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supported him in order to eliminate Yulia TYMOSHENKO from the political leadership of Ukraine.

As regards the conflict of these two oligarchs, FIRTASH and TYMOSCHENKO, in particular in the gas business and in this context also in politics, detailed explanations will be provided below.

In the first round on 17 January 2010, TYMOSHENKO came second with 25% of the vote, while YANUKOVYCH came first with 35%. In the run-off on 14 February 2010, YANUKOVYCH took 48.95% of votes, TYMOSHENKO 45.47% and the certainly narrow lead of about 3.5% was down to the support of FIRTASH.

While TYMOSHENKO represented the Orange Revolution, YANUKOVYCH presented himself as a "blue alternative" in the election campaign, which would more strongly represent the Russian-speaking bloc in the Donbas.

From this moment m time, after the election victory of YANUKOVYCH in 2010, the person affected was or 1s doubtless a political heavyweight in Ukraine, and his influence became extremely deep from the election victory of YANUKOVYCH, which he supported on a large scale.

(In this context, it is pointed out that some time after his election victory the arrest and conviction of Yulia TYMOSHENKO took place,

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which – to cut a long story short – were "reversed" after the flight of YANUKOVYCH and the arrest of FIRTASH in Vienna in March 2014).

Within the framework of extradition hearings, a comprehensive taking of evidence was carried out, whose aim was largely to establish the political weight of the person affected in Ukraine.

In summary, it can be said in advance that the person affected – due to the credible, coherent and clear information provided by the witnesses questioned – is a so-called big player of Ukrainian politics, who, also given his position as one of the biggest employers in Ukraine as well as the Chairman of the Association of Employers of Ukraine, Co-Director Of Ukraine's Social Partnership and owner of the biggest, most popular and broadest TV sender in Ukraine, can certainly impact both the voting tendencies of parts of the Ukrainian population and thereby political decisions in Ukraine.

(In connection with influencing or the possibility of manipulating voters via TV stations, various election rounds are referred to in Italy.)

But the witnesses questioned within the framework of the extradition hearing also confirm this assumption.

As such, witness Vitali KLITCHKO (AS 237 et seq. in ON 139) confirmed that the person affected when the Maidan protests reached

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their peak in 2014 and a meeting was held in Kiev of the three European foreign ministers with the Ukrainian opposition – which he attended himself – albeit not on the open stage, was held. According KLITCHKO, he played a key role in Ukrainian politics and influenced the decisions of YANUKOVYCH. The political space in Ukraine was not so large and everyone speaks with one another. FIRTASH played a certain role too (AS 245 in ON 139).

The witness Leonid KRAVCHUK (AS 24 9 et seq. in ON 139) himself first President of independent Ukraine between 1991 and 1994, who continues to be an independent political observer of Ukraine, although no longer holding such an office, stated in a credible manner and interested in presenting the truth that he considers the person affected to be a very influential person in Ukraine.

Above all because he has large and comprehensive businesses in Ukraine and is the Chairman of the Association of Employers. This is a very influential structure, which unites about 80% of the economy in its ranks.

He is also the owner of the very influential and large TV station INTER; it broadcasts in two languages.

The person affected also has broad experience and many contacts with businessmen around the whole world (AS 253 in ON 139).

The witness also states that he, as the Chairman of the Association of Employers, was certainly also involved as an advisor in decisions on key questions during the presidency of YANUKOVYCH.

And he also knows, explains KRAVCHUK, that the person affected

supported YANUKOVYCH in the 2010 presidential election campaign, this predominantly via the TV station INTER.

The witness Sergey LOVOCHKIN also confirmed the politically influential position of the person affected as very clear (AS 259 in ON 139).

LOVOCHKIN was, as YANUKOVYCH's Prime Minister of Ukraine, his Head of Staff.

From 2010 to 2014, he worked as Chairman of the Presidential Administration and then held a key role in the era of YANUKOVYCH.

He refers to FIRTASH as one of the biggest businessman in Ukraine and confirms that the support of FIRTASH in the 2010 elections had major significance for YANUKOVYCH (AS 2 61 in ON 139).

FIRTASH can communicate with a large number of people who listen to his opinion; after all, the Association of Employers in Ukraine unites about 15 million people. Furthermore, via the TV stations in his area of influence, he can position or present candidates in a more detailed manner in various elections.

The person affected is one of those people who was able to give YANUKOVYCH advice and whose advice he also took into account (AS 263 in ON 139).

The witness Yuri BOYKO stated during his interrogation as a witness that he was Chairman of the Ukrainian company Naftogaz and

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then held a ministerial role in Ukraine on several occasions. In October/November 2013 he was Deputy Prime Minister.

He also confirmed that the person affected supported YANUKOVYCH strongly. He referred to the person affected, in particular during the period when Ukraine or its political rulers had to decide whether to conclude the EU Association Agreement or not, as a "key figure" (AS 289 in ON 139).

The witness Inna BOGOSLOVSKAYA provided a very comprehensive and extremely convincing insight into domestic Ukrainian politics and the role of the person affected in it (AS 293 et seq. in ON 139).

She is a long-standing member of the Ukrainian parliament; in 2007 she was Deputy Justice Minister and herself a candidate in the presidential election campaign of 2010.

Since 30 November 2013, she has worked as an "independent member of parliament". She also sat on two parliamentary committees, which also dealt with the company RUE and the gas business between Russia and Ukraine, amongst other things, as the Chair.

BOGOSLOVSKAYA noted that the person affected is doubtless an influential person in Ukrainian politics. His impact on politics became visible for the first time when that of Yulia TYMOSHENKO became weaker. Her control, in particular in the gas sector, was assumed by the person affected.

In a clear and – when looking more closely at the geopolitical and economic policy actions in the Ukrainian/Russian space – certainly

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credible manner, she confirms the view that gas equals politics in Ukraine and Russia.

Russia uses gas as a means of exerting political pressure and this card has been played several times in the past.

The person affected is very influential thanks to his political role in the Association of Employers and this association is extremely influential in the domestic area, as it is not possible to conclude a "social contract" every year without its approval.

She also referred to the TV stations controlled by the person affected as a "lever on public opinion".

All these – very briefly summarised – witness statements show clearly and credibly that the information of the person affected regarding his capacity to influence in Ukraine, both as regards the past and the future, is correct.

The person affected himself admitted in an equally clear manner and in line with the statements of the witnesses interrogated when asked about this matter that he gave huge support to Viktor YANUKOVYCH in the 2010 presidential election campaign.

For instance, he explained within the framework of the extradition hearing that he tried to influence the workforce at his businesses so that they support YANUKOVYCH. He held talks with the union and thereby influenced their opinion.

As such, he used all options to support YANUKOVYCH in the

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presidential election and to enable his victory.

When YANUKOVYCH was at the head of the country, he was his adviser and coordinated many of his actions with YANUKOVYCH. Already as Chairman of the Section of Employers, he held meetings with him, and he was himself a major employer, making his opinion very important for YANUKOVYCH.

What political weight the person affected had in Ukraine and even after his arrest in his home country, however, becomes clear from a meeting held after his arrest in Vienna, when, amongst others, Vitali KLITCHKO, the current State President of Ukraine, Petro POROSHENKO, and the person affected himself met in Vienna behind closed doors.

The fact that this meeting occurred is also confirmed; in addition to the person affected, Vitali KLITCHKO and Sergey LOVOCHKIN also attended. Although it seems that all attendees agreed to observe secrecy in relation to the contents of the meeting, one thing is certain:

During this meeting between POROSHENKO, KLITCHKO and FIRTASH, it was agreed or arranged that KLITCHKO, a presidential candidate running against POROSHENKO, would withdraw his candidacy in favour of POROSHENKO, in order to unite the votes of the opposition and those not assigned to the camp of Yulia TYMOSHENKO.

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This finding can be stated in a logically clear manner and without doubt, given the following events or statements:

As such, the person affected stated in a credible manner that having been released from prison on bail, YATSENYUK was Prime Minister in Ukraine.

He wanted to prevent Yulia TYMOSHENKO from becoming President in the upcoming elections.

It was important for him that this should not be permitted.

He therefore initiated this meeting in Vienna and, amongst others, Petro POROSHENKO and Vitali KLITCHKO accepted his invitation.

Although he did not provide any information on the content of the talks, he said that he was satisfied with the result of the get-together. He was also ultimately satisfied when the election outcome ended in favour of Petro POROSHENKO.

Vitali KLITCHKO also confirmed this meeting in Vienna during his interrogation.

Sergey LOVOCHKIN also noted in his interrogation when asked that the objective was to unite the "democratic candidates". He explained that the person affected went into this meeting with the view that a uniting of the democratic forces, who were KLITCHKO and POROSHENKO to his mind, would result in TYMOSHENKO not standing a chance.

FIRTASH also informed him in a meeting of his position, whereby he supported KLITCHKO withdrawing his ambitions of becoming

President in favour of POROSHENKO, as POROSHENKO was expected to have a greater chance of winning the election at that time.

Although he was not able (or willing) to provide any information on the details of the talks, it is certainly clear and becomes obvious from the reporting in the media that both Petro POROSHENKO and Vitali KLITCHKO were presidential candidates before this meeting in the upcoming election round, i.e. intended to run in this election.

It is also certain that a couple of days after this meeting, Vitali KLITCHKO withdrew his candidacy for the presidential office in Ukraine and instead issued a voting recommendation in favour of Petro POROSHENKO, who ultimately went on to win the election.

Although this was not expressly confirmed by the witnesses and person affected and the subject of the talks during this meeting continues to be unknown in all its detail, any other conclusion than that it was agreed in this meeting by FIRTASH, POROSHENKO and KLITCHKO that KLITCHKO would withdraw his ambitions of becoming President of Ukraine in favour of POROSHENKO is simply out of touch with reality.

For this, the albeit occasionally vague statements of the witnesses and of the person affected and the actual events reported all over the media are too clear to draw any other conclusion.

However, this meant simultaneously that the person affected played a central role in Ukrainian politics even at the time of being arrested in

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Austria. It would otherwise not make any sense for two presidential candidates, POROSHENKO and KLITCHKO, to travel to Vienna at a time when there was unrest in Ukraine and the election campaign was entering its hot phase in order to meet FIRTASH in order to then immediately announce that POROSHENKO would continue to run for the office of President, whereas KLITCHKO would withdraw his candidacy and simultaneously recommends electing POROSHENKO, thereby creating the facts that the person affected himself aimed to achieve.

Numerous media outlets reported this, and the information of the witnesses KLITCHKO, LOVOCHKIN and the person affected are also in line with these media reports.

For instance, the headline of SpiegelOnline during those days was:

"Opposition politician Vitali Klitchko will not run for president in Ukraine after all. He has instead endorsed the candidacy of businessman Petro Poroshenko, both want to stop former prime minister Yulia Tymoshenko."

(http://www.spieqel.de/politik/ausland/ukraine- klitschko-verzichtet-auf-praesidentschaftskandidatur-a- 961427.html)

The Austrian daily Der Kurier also noticed the meeting and the reason for the meeting. One headline of the newspaper, for instance, reads:

> "Troika against Yulia in Vienna. At the end of March, a secret meeting of top politicians was held with the oligarch Firtash."
> This article then explains: "A presidential candidate with perfect connections in Ukraine's business community, a former boxer with political ambitions who now does not want to become President but Mayor after all and a businessman with wealth in the billions with perfect links to the Kremlin and problems with the US and Austrian

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justice authorities – on 25 March a meeting was held in Vienna between Petro Poroshenko, Vitali Klitchko and Dmytro Firtash. The fact that the meeting took place has been confirmed. What is behind it, is the subject of speculation. The fact that it related to the Ukrainian election is certain."

This article also explains the following:

"The unusual troika in Vienna will likely be united above all by a joint enemy: Yulia Tymoshenko, former Prime Minister, then incarcerated and now doggedly determined to become President. Surveys show that she is nowhere near Poroshenko, but that may change quickly.. Investigative journalist Serhy Leshchenko of Ukrainska Pravda believes that the meeting in Vienna was mainly about two things: Klitchko was to be encouraged to withdraw his candidacy and Poroshenko given airtime on Firtash's TV station. The government and therefore also the state media, says Leshchenko, are currently firmly controlled by Tymoshenko followers. A grotesque highlight was a four-hour interview with

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Tymoshenko two weeks ago. Weakening Tymoshenko is mainly in the interest of Poroshenko and Firtash. The former wants to become President, the latter is inspired by open animosity with Tymoshenko, considering that she once kicked him out of the gas business. Too bad that the meeting was made public."

http://kurier.at/politik/ausland/machtkampf-in-ukraine- dreiergespann-gegen-julia-in-wien/59.187.849

Although media reports can, of course, never be sufficient or conclusive evidence of findings made, they are nevertheless partly included in the assessment of the evidence, as they confirm, on the one hand, the information of the witnesses and also reflect the results of journalists' research.

Due to the considerations just made, it can be noted without doubt that the person affected is an influential figure in Ukraine not only given his commercial position, but was in the past and is in the present a figure with huge political clout.

Whether the person affected is a so-called "kingmaker" of Ukrainian top politics cannot be determined, but he – obviously being independent from party political constellations, as he supports politicians of various parties – is clearly a figure of Ukrainian politics

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who has been consistently at the top of Ukrainian politics in an influential manner from 2009/2010 and can influence election outcomes as well as the question which candidates run for a political office or not.

This finding is based on the witnesses questioned personally by the extradition court within the framework of the extradition hearing, the court's research of publicly accessible documents, the media reporting and logic, and is also confirmed by the further affidavits in the file and submitted by various people, but who were not interrogated.

Richard SAKWA also comes to this conclusion in his expert report.

In any event, the claim or assumption that the person affected is not a political big player, at least in Ukraine, must be rejected as a denial of reality.

On the basis of these findings, the next question now arises:

To what extent is the requesting state, the United States of America, involved in Ukrainian domestic politics, what interests does it have and what is the connection between the affected person and any interests of the US in Ukraine?

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On the one hand, it must be noted and does not require excessive taking of evidence that Ukraine is of major geopolitical and economic policy significance due to its geographical location, as a neighbouring state of Russia in connection with its surface area, population and commodities deposits.

As such, in particular the two commodities of gas and titanium, which are at forefront of the Ukrainian economy and in the sights of international interest.

It is also generally known that Gazprom, a Russian company, is the main supplier of Gas to Ukraine and also indirectly to Europe, as a large share of the gas imported by Europe is transported via Ukraine.

The fact that on the basis of these circumstances Russia can exert pressure on Ukraine and indirectly on the European Union (in particular in the past, in which the gas dependency on Russia was greater than it is now) is very well known and became apparent, in particular, in the gas crises of the past ten years approximately, which will require a further explanation in detail below.

The fact that such a dependency of the West on Russia is geopolitically explosive is also indisputable.

The commodity titanium is also a major factor, as titanium is used, in particular, in aircraft manufacturing (and therefore also in the arms

industry). While the US has no titanium deposits of its own, for instance, large titanium deposits can be found in Ukraine, while the processing of this commodity takes place largely in Russia.

This fact is also hardly beneficial to the West.

As such, it certainly makes sense and was to be observed in recent years that, on the one hand, the European Union, but also the US, indicated an interest in Ukraine associating itself with the European Union in particular in the economic policy area, for which reason intensive talks were held in recent years on the signing of an EU Association Agreement, also with a strong involvement of the United States of America.

Russia, in turn, and this is also very well known and makes logical sense, thereby believes to be, in particular as regards economic policy, under threat and pursues the goal of Ukraine joining the Eurasian Economic Union (EEU) in order to avoid losing its area of influence over Ukraine, as Russia is after all, in addition to the gas and titanium business areas, one of the key trading partners of Ukraine.

This conflict of interest obviously also results in geopolitical conflicts, which manifested themselves, in particular in recent years, in 2015 (Crimea crisis).

Assuming the above, it can therefore be noted that Ukraine (and therefore also Ukrainian politics) is a country, which is hugely significant both for the European Union as well as for the US and Russia

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as regards economic policy and geopolitics, 1.e. is stuck precisely between the interests of the two former blocs (East-West).

The fact that the United States of America is not merely assuming the role of observer in the tug-o-war over Ukraine but are actively involved in the political discourse (both the negotiations of the European Union with Ukraine over the EU Association Agreement as well as direct meetings with Ukraine itself) cannot be dismissed and there are numerous pieces of evidence of this.

As such, most recently after the Maidan protest movement started at the start of 2014, an increased number of declarations, press releases and high-ranking meetings of representatives of the US with representatives of the European Union and Ukraine occurred, which clearly shows that the United States of America is attempting to get actively involved in the political developments in Ukraine.

Also when the then State President YANUKOVYVCH indicated at the end of October/early November 2013 that he would not sign the EU Association Agreement under pressure from Russia, a delegation travelled from the US, led by the US Deputy Secretary of State, Victoria NULAND, to Kiev in order to negotiate directly with YANUKOVYCH about this matter (this will also be explained in greater detail below).

In any event, it can be assumed that the United States of America had and continue to have a major interest in Ukraine opt for the West in the question whether it should turn to Russia or the European Union or remain neutral, and the US is also actively pursuing this interest politically.

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On the basis of these considerations, it suggests itself that (in addition to the European Union) the US is also interested in Ukraine's (domestic) politics and trying to influence it.

If one now considers that the person affected – as explained above in detail – is a person with huge political influence who can influence the political decision-makers in Ukraine, it is absolutely clear that the US is also "interested" in Dmitry FIRTASH for political reasons.

The interest of the US in the person affected, however, not only became apparent at a time when the signing of the EU Association Agreement was imminent, but already many years beforehand, this happened in the period when the person affected became a leading figure in the gas business and was clearly establishing best contacts in Russia.

In order to see and understand this, the "gas crises" of the recent years between Russia and Ukraine need to be examined.

In this respect, too, the expert report of Richard SAKWA serves as the basis for the findings made. He shows in a logical manner in his explanations, while stating verifiable sources, what the context and

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conflicts are behind the so-called gas crises and to what extent the person affected was involved in them (and their "resolution"):

Ukraine has one of the broadest gas pipeline and storage systems in the world. The Soviet Union started exporting gas to Western Europe in the years around 1970. For this reason, a comprehensive pipeline system was built in order to transport gas from the major western Siberian gas deposits to the new markets in Europe as well as to flow gas from Turkmenistan to the West.

This system is still monitored on a screen at the Gazprom head office in Moscow, which is considered to be the centre of Europe's energy networks.

As such, Gazprom exported 234.4 billion cubic metres of natural gas in 2013, for instance, of which a large part was delivered via pipelines to Turkey and the rest of Europe (and therefore also to the states of the European Union), while the member states of the European Union alone procure about 150 billion cubic metres.

This makes Gazprom the key gas supplier for the European market, delivering more than one quarter of the gas needs of the EU (AS 52 in ON 114).

As shown above, Gas in Ukraine has long been a key component of politics.

This resulted in two "gas crises" in the past ten years, when Russia ceased delivering gas to the Ukrainian domestic market in 2006 and in 2009 for a couple of days.

These key circumstances show why the natural gas issue already became the focus when an independent Ukraine emerged in 1991.

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In the first years of Ukraine's independence, there were endless disputes between Naftogaz, the biggest Ukrainian energy company, and Gazprom, the Russian gas monopolist. These conflicts peaked in the crises of 2006 and 2009, which are, however, "only" to be seen as the peak of the long discourses.

The person affected himself began to enter the gas trade in Ukraine, which itself had huge gas needs, in 2003 and established in 2003 Eural Trans Gas (ETG) and acted as a broker to supply Central Asian gas to Ukraine.

Already at that time, Yulia TYMOSHENKO was a leading entrepreneur in the gas trade and a commercial conflict developed between FIRTASH as the co-owner of ETG and TYMOSHENKO, who had influence on the previous broker ITERA.

It seemed that ETG was offering the Ukrainian energy company Naftogaz more favourable terms than Itera.

In July 2004, RUE was established to replace Eural Trans Gas (ETG).

This is a joint venture, in which Gazprom held 50%, the person affected 45% and a partner called Ivan FURSIN 5%.

An Austrian company played a key role in this new company, which started trading on 1 January 2005, i.e. Austria's Raiffeisenbank or its

subsidiary Raiffeiseninvestment Group (RIAG), considering that it held on a fiduciary basis the shares of FIRTASH in RUE and on his behalf and the person FIRTASH as a trustor remained secret for a long time and the subject of lively speculation.

The fact that the US authorities were already hugely interested in the trustor of RIAG has been shown clearly by the witness Wolfgang PUTSCHEK.

He said accordingly that his company carried out an in-depth audit of the fiduciary pledging of FIRTASH and, as this resulted in a positive result, had no concerns to act as a trustor on behalf of the person affected.

He explained that when RIAG invested in RUE, malversations and considerable pressure was exercised by the United States of America in order to disclose the fiduciary pledging.

(A detailed discussion of this will follow in the copy of the judgment.)

Approximately in parallel with the establishment of RUE, Yulia TYMOSHENKO became Prime Minister of Ukraine on 4 February 2005 and there were conflicts between Naftogaz and Gazprom over the agreement concluded from this moment in time.

Whether she attempted to push RUE out again in order to restore Itera's privileged position in the gas trade between Russia and Ukraine may be left open; in any event, she tried to eliminate RUE as a gas broker. An endeavour in which she ultimately succeeded.

On 8 September 2005 she was dismissed as Prime Minister, but

Ukraine was already in dispute with Russia over the gas issue.

The price offered by Gazprom was rejected by Naftogaz, Russia therefore stopped the domestic gas supplies to Ukraine on 1 January 2006 after a period of worsening tensions in a show of force.

As demand was at its height due to the winter season, Ukraine siphoned off gas from transit deliveries intended for Western Europe for its own domestic consumption.

On 4 January 2006 an agreement was finally entered into by Naftogaz and Gazprom, under which Russian gas would again be made available to Ukraine.

At the heart of this agreement was the gas trader RUE, controlled by FIRTASH.

As such, in February 2006 a special company was established in order to perform this agreement, Ukrgaz Energo. This company was owned by Naftogaz and RUE in equal halves.

This company had a monopoly on the gas trade for industrial consumers from March 2006 to April 2008 and a monopoly on imports between April 2006 and April 2008.

In this context, it must be noted that cables show that already at that time a certain dissatisfaction of the US over this agreement of 4 January 2006 existed, whereby RUE was at the heart of the gas trade in Russia.

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The termination of this agreement of 4 January 2006 ultimately resulted in the gas crisis in January 2009.

Yulia TYMOSHENKO, who again became Prime Minister of Ukraine on 18 December 2007, was keen to terminate the agreement negotiated on 4 January 2006.

She also managed to do so, and UkrgazEnergo was therefore no longer a player in the Ukrainian gas market from April 2008 to 2011.

However, further tensions between Gazprom and Naftogaz followed, resulting in Gazprom again starting to reduce gas supplies to Naftogaz in March 2008.

TYMOSHENKO, who now personally interfered in these conflicts, signed on 2 October 2008 a memorandum with Vladimir PUTIN, whose content was to end the brokers in gas transactions between Russia and Ukraine as a condition for future gas agreements.

Despite the memorandums, no gas agreement was signed in 2009 and the crisis intensified due to Ukraine's debts to Russia for gas received in 2008.

By 1 January 2009, neither an agreement on gas supplies nor on the debts or their settlement/write-off was concluded.

As such, a stop to natural gas deliveries to Ukraine again occurred from 1 January to 18 January 2009, and Ukraine again siphoned off gas intended for the rest of Europe in order to thereby plug its energy shortfall in the winter.

On 19 January 2009 a fresh agreement was signed, which enabled

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Gazprom to sell natural gas directly to Naftogaz.

Whether this agreement, which was concluded directly between TYMOSHENKO and PUTIN, was detrimental for Ukraine, can remain open.

All that is clear is that the gas price was finally about 250% higher than that negotiated in January 2006 by RUE; precisely this agreement was ultimately the trigger for the conviction and incarceration of TYMOSHENKO.

With this new agreement, RUE, which was jointly owned by Gazprom and FIRTASH, was eliminated and a fixed regulation for the setting of the price of imported gas defined.

One of the first acts of YANUKOVYCH after becoming President in February 2010 was to negotiate the so-called Kharkiv agreements, which were signed on 21 April 2010 and amended the agreement of 2009 concluded by TYMOSHENKO-PUTIN in favour of Ukraine.

The content of this agreement was, amongst other things, the fact that in lieu of payment for the lease of the navy base of Sevastopol, Ukraine would get a 30% discount on the gas price and, in turn, Russia would be allowed to continue to use Sevastopol as a base for its navy until 2042.

The findings made show that the person affected was already a key figure in the Ukraine/Russia gas conflict in 2006 and therefore also a major factor of the energy question of the members states of the European Union.

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This was also the case in 2006, when he "resolved" the first gas crisis with RUE and after being kept away from the gas market after the appearance of TYMOSHENKO around 2009, as a supporter and adviser of YANUKOVYCH in the negotiations of the Kharkiv agreements.

In this context, it will hardly be a coincidence that FIRTASH, having been pushed out of the gas market by TYMOSHENKO in 2008/2009, in the following election campaign hugely supported her opponent YANUKOVYCH and negotiated away the agreements eliminating the person affected from the gas trade after the election victory and TYMOSHENKO being arrested and convicted at virtually the same time.

Gas is politics in Ukraine and the person affected was clearly involved.

The assumption that this position meant he was in the crosshairs of the United States of America, which has always been interested in the energy matters of the European Union, suggests itself.

The information provided by the person affected within the framework of the extradition negotiations about this subject is in line with the above.

As such, within the framework of the extradition negotiations he stated in a consistent and credible manner that the agreement concluded between Gazprom and Naftogaz expired at the end of 2005. He himself had a joint venture with Gazprom (RUE) at the time and it was the task of this company to purchase gas in Turkmenistan, Uzbekistan and Kazakhstan.

As such, the company purchased about 67 billion cubic metres of gas. 50 billion of this was supplied to Ukraine, and 17 billion to Europe.

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The Ukrainian state procured, in addition to this transaction, about 25 billion cubic metres of gas under a separate agreement with Gazprom.

Precisely this separate agreement expired on 1 January 2006 and the Russian and Ukrainian representatives were unable to agree its extension.

This triggered a major conflict in Ukraine, the gas supplies were at risk, also those in Europe, because Gazprom had suspended all gas deliveries.

His company, RUE, however, had obligations of its own, it had to supply gas to Ukraine and Europe, and was therefore interested in finding a solution. The conflict consisted of Ukraine wanting a lower gas price than the other European countries, but Gazprom offering Ukraine "European" prices.

RUE acted as an arbitrator in this process.

They were able to do this because they – as becomes clear from the above – procured various gas supplies from various countries at different prices.

They had various agreements in place for gas supplies to Ukraine and Europe and they were therefore able to "balance" the gas price. This allowed offering Ukraine a price that satisfied both sides.

This resolved the 2006 gas crisis and was also an initial signal for the US to "deal" with him, FIRTASH.

To his mind, the US was of the opinion that he represented the

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interests of Russia and everything was done, also with the involvement of Yulia TYMOSHENKO, to eliminate him from this business.

This was also successful in 2009 and the company RUE was locked out as a gas broker. When RUE was also responsible for gas supplies, that price for gas supplies would have been USD 179.

The successor – as explained above – was the agreement negotiated by TYMOSHENKO, under which a price of USD 450 would have been payable for gas supplies.

To his mind, this agreement was not a commercial, but merely a geopolitical decision. It is entirely irrelevant at what price gas was purchased, the key objective, also for the US government was to take him out of the equation in this area.

Furthermore, he also explained in a credible manner and in line with the statements of the witnesses, which had perceptions here, that he supported Viktor YANUKOVYCH in the presidential election campaign of 2010, as he did not agree with the political views of the then Prime Minister Yulia TYMOSHENKO, who was in turn backed by the US authorities. Himself, he was considered to be pro-Russian and this view, which he does not consider to be correct, worsened the conflict situation between him and the US further to his mind.

He supported the election campaign of YANUKOVYCH with all options he had. He exerted in his businesses influence on employees and unions, he tried to influence via his TV stations and used all options open to him in order to help YANUKOVYCH win the election, which ultimately succeeded.

As, following the election victory of YANUKOVYCH, Yulia TYMOSHENKO, who was viewed as the favourite of the Americans, not

only disappeared from the political stage, but was shortly thereafter also arrested and finally sentenced to several years in prison, he himself was rated as pro-Russian by the US authorities and identified as a close adviser to YANUKOVYCH, he is now the special focus of the US authorities.

These presentations by the person affected, whereby the US authorities were hugely interested in his RUE in 2006 in particular and were strongly opposed to it, are also documented by the details from the witness Wolfgang PUTSCHEK and can therefore be considered to be correct.

As such, the witness PUTSCHEK explained within the framework of the extradition hearing (page 313 in ON 139) very clearly what pressure the US authorities exerted on him or on the Austrian authorities when Raiffeisenbanken Group acted as a trust on behalf of the person affected and his group of companies appeared.

Wolfgang PUTSCHEK was member of the Board of Directors of

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Raiffeiseninvestment AG in 2004 and strongly involved in the business agenda of RUE.

For instance, the witness, who gave the impression of being credible and interested in presenting the truth, stated that the person affected addressed, via a subsidiary of Raiffeisen Group, Raiffeisen in Ukraine in order to offer potential fiduciary services.

Within Raiffeisen Group, there existed a principle obligation to forward all details of a prospective client to Legal & Compliance, which carries out an in-depth audit of the potential contractual party and ultimately gives the subsidiary (of Raiffeiseninvestment AG) the green or red light for the conclusion of the agreement.

Finally, after an in-depth audit, the green light was given and the agreement was drawn up with legal effect in July 2004. The trust, Raiffeiseninvestment AG, now held for the group of companies of the person affected his shares in RUE; it was not concluded in order to resolve a gas crisis that erupted in January 2006, but as a normal operating transaction.

When RUE – as shown above – was involved in the gas crisis in January 2006 and resolved it, PUTSCHEK as a member of the Board of Directors of Raiffeiseninvestment AG was involved as a financial advisor and trustor in the actual business.

Asked from when the interest of the US in RUE became noticed, he stated (AS 317 in ON 139) that initial accusations from Yulia TYMOSHENKO already occurred in autumn 2005, that within the

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framework of the trust the procedure was not correct and he referred to the interest of the US authorities as "continued" interest.

With the eruption of the gas crisis and the solution by RUE, this interest spiked again.

As such, the witness reported that it was one of the first effects that a so-called "non-paper" was sent to the Austrian financial market supervisory authority by the US embassy with the request to clarify the trust on the part of Raiffeisen.

A non-paper, said PUTSCHEK, is an informal request that is not understood to be an official document (and whose existence would also be denied), which is considered to be a document that needs to be answered in any event. It was also clear that this was sent by the US authorities.

PUTSCHEK explained further that, also when there were later meetings in the US, the US authorities were above all interested in two matters:

1. Who is the trustor?
2. Is it necessary that RUE actually exists in this shape and form and is it necessary that Raiffeisen Group has a holding in it?

He went on to explain that there were repeated requests and meetings on the part of the US embassy in this respect and that the questions in this direction became increasingly insistent. On the basis of business cards issued (in meetings), he was also able to see that members of the secret services (!) also attended these meetings.

Finally, a trip was made to Washington to the US Department of Justice (!), where a delegation of the US Minister of Justice welcomed

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members of Raiffeiseninvestment AG and of Group DF to "listen" to explanations about RUE.

The explanations of the witness PUTSCHEK gave the impression in court that Raiffeiseninvestment AG, in particular, had to justify itself to the US authorities as to why it was involved in a joint venture with Gazprom and why it was acting as a trustor on behalf of a group of companies.

This provides clear evidence of the fact that the US authorities clearly had an exceptionally strong interest in and dislike for RUE and exerted pressure on it to disclose the trust relationship and also to end it.

The fact the geopolitical interests guided this intervention by the US is clear; no other explanation can be given.

It was also suggested by the US authorities in this meeting, which PUTSCHEK attended personally, that a mafia-like organisation with Semyon MOGILEVICH was behind RUE.

An accusation also made by Yulia TYMOSHENKO on several occasions and also alleged within the framework of the extradition proceedings by the US authorities, i.e. that the person affected

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collaborates closely with this Russian mafia godfather, this allegation not being proved in any shape or form neither in the past nor in the framework of the extradition proceedings.

Furthermore, the US authorities complained that RUE was not needed as a business structure, as it does not fulfil any purpose, for which reason it should not have been established at all.

This shows clearly that the US authorities were strongly against RUE, although commercial interests cannot substantiate any motivation for this.

The trust, which was designed for only a couple of years from the very outset according to PUTSCHEK, was finally disclosed and then also terminated.

The witness also explained that the US authorities also intervened otherwise as regards RUE. For instance, the managing director of Raiffeisen as well as the general counsel of Raiffeisen, Dr OTTENSTEINER and Dr STEPITZ, were questioned by the US authorities in this matter.

A request was also made to the Austrian Ministry of Finance, then headed up by Karl Heinz GRASSER. The same insisting questions were also asked within this framework.

It was noted that Austria and the US are partners and the US authorities – accordingly – expected that the trustor be disclosed.

Within the framework of the Austrian Banking Committee, the holding or intervention of the US authorities was also a subject.

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In his written statement, Item 129, which the witness maintained during his interrogation, he noted that the US in his perception worked urgently and intensively towards pushing RUE (and therefore FIRTASH) out of his position in the gas sector from January 2006.

He was also personally affected, he was defamed and he and other employees were accused of having personally accepted bribes. This becomes clear from cables of the US embassy sent to Washington as well as media reports. As such, it was alleged, amongst other things, that Raiffeisen employees privately "cashed in" on USD 360,000 as bribes for their relevant services at RUE.

These summary presentations of the witness, which are in line with the presentations of the person affected regarding this matter, document clearly that the US not only had an increased interested in the gas business of the person affected in 2006, but were also extremely negative about him.

A fact that will also be a central issue in later considerations during the drawing up of the judgment.

Under these assumptions, it must now also be specifically verified whether the relevant extradition request of the US authorities – regardless of whether the person affected is sufficiently suspected of the allegation – is at least also politically motivated.

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Here, it must first be noted that the two contracting parties of the extradition treaty, the United States of America and Austria are clearly of the opinion that the relevant other contracting party also files politically motivated extradition requests, therefore assume that such an approach is possible, as this requires the express standardisation of Article 4(3) of the extradition treaty.

Furthermore, it must be noted that when assessing whether an extradition request (also) has a political nature, it cannot be assumed that this or the reasons for it can be clearly identified, as – regardless of the specific case – it must be assumed that no requesting state "presents" the requested state with such reasons for a political motivation that would make it unmistakable.

Objective evidence for such findings will therefore not be available in any event and such a necessity would make the standardisation of Article 4(3) of the extradition treaty superfluous.

In fact, indications that could justify such an assumption will need to be verified and it will be necessary to consider as sufficient a string of indications – even if condensed – to determine whether an extradition request is also politically motivated in order to satisfy the assessment standards.

This case requires, in particular, a comparison of two scenarios at relevant times, which can be found in the file. On the one hand, the approach of the US authorities needs to be examined itself, in particular the fact that an initial request for the arrest of the person affected – to date without any clear reason – was urgently withdrawn to then renew it a couple of months later with the same content.

On the other hand, the actions – that are still to be set out – of the requesting authorities must be compared with the political events in Ukraine and a picture emerges – taking into account the above considerations on the political influence of the person affected as well as on the (geo)political interests of the US in Ukraine and the person affected – that makes the assumption that the extradition request has no relation to the political events in Ukraine seem entirely unfathomable.

Comparison of the key events:

On 30 October 2013 (the date 2012 stated in AS 2 in ON 2 is a typo) the Federal Ministry for Justice received by fax and e-mail – therefore extremely urgently – a letter from the U.S. Department of Justice, in which the arrest of the accused was requested so that he be extradited and prosecuted.

The US authorities noted that he would be in Austria on or around 4 November 2013 for a short period of time and a brief summary of the circumstances of which the person affected is being accused was enclosed with this request (ON 2).

Remarkable in this letter is also that the US authorities already at the time presented his "close relationship" with Semyon MOGILEVICH

– a fact of which he is not being accused and which has not yet been proven although this allegation was already made in 2006 within the framework of the trust given by Raiffeisen Investment to RUE (see the statements of the witness PUTSCHEK) – and accordingly present the person affected as a person whom it is difficult to arrest and regarding whom it is to be expected that he might disappear with the help of MOGILEVICH. A presentation that – at least at the time of judgment – is objectively incorrect.

Whether the US authorities knowingly sent this incorrect information to the Austrian authorities to lend weight to the request for arrest or whether they were wrong in their own assessments is irrelevant.

However, it is clear that, and this can be objectively shown from the travel movements of the person affected in Europe and his political actions or his political position in Ukraine, the person affected – regardless of whether he maintains relationships with MOGILEVICH or not – was in no way "in hiding" and that his whereabouts could be established by the US authorities and they could have arrested him at all times due to his – already frequently – listed "offices" held in Ukraine.

It does not take a great investment of time to research on the internet the appearances and actions of the person affected during the then months; and this will also have been possible for the US authorities

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or their secret services.

In this context, reference is also made to the submitted and per se not implausible presentation of the "travel list" of the person affected in the period from 1 June 2013 to 10 March 2014 (AS 795 et seq. in ON 115), which shows that the person affected travelled through numerous countries in Europe (i.e. France, Germany, United Kingdom, Italy and Switzerland) over this period.

This travel list stands up to verification.

As such, for the period from 15.10.2013 to 23.10.2013 (AS 798 in ON 115), it is stated that the person affected was in England.

It did not take any lengthy research of the court to find on the internet pictures of the person affected at public events in this period in the United Kingdom.

For instance, he was present at the London Stock Exchange on 17 October 2013.

http://ukraine-days.co.uk/en/news/16102013.html
(Incidentally, an extradition treaty is in place between the US and the UK.)

It can therefore be considered to be certain that it would have been possible for the US authorities to already previously have the person affected arrested within the framework of a request for legal assistance.

Both at **earlier moments in time** (considering that the bill of indictment is dated 20 June 2013, the arrest warrant dated 3 July 2013 -

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AS 637 in ON 43), as well as in **other countries.**

A fact that will also be of key relevance in a final consideration.

The note from the US authorities was finally sent as a closed and express letter to the Central Prosecutors' Office for the Investigation of White Collar Crime and Corruption (AS 1 in ON 2) and on 1 November 2013 a national arrest warrant was granted on the basis of the US request in reduced service on request of the Vienna Prosecutors' Office (ON 4).

While the proceedings was temporarily handed over to the Vienna Prosecutors' Office and the domestic security authorities were "busy" with arresting (or preparing the arrest of) the person affected, the request not to execute the arrest for "strategic reasons" was received, which has remained unexplained to date despite several requests for information as to why.

For instance, by e-mail of Friday, 1 November 2013, 10:20 pm sent to the Federal Ministry for Justice, Jason Carter "*asked that that request not be executed. We will alert you immediately if that changes*". (AS 249 in ON 10a).

Probably because the US authorities did not receive a reply from the Federal Ministry for Justice at the weekend, a further message was received by the Federal Ministry for Justice on 3 November 2013, 6:07 pm from Betsy Burke, which again attempted to avoid any arrest ("as *part of a larger strategy, US authorities have determined we need to pass up this opportunity.*" - AS 251 in ON 10a).

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The US authorities have been unable or unwilling to explain to the Austrian court so far what they meant when they said "as *part of a larger strategy...*".

Finally, on Monday, 4 November 2013, 1:34 pm, a further e-mail was received from Steven L. Paulson with more or less content-free explanation, in which he specified "...over the weekend, several discussions between senior officials from the U.S. Department of Justice, U.S Department of State and the FBI in Washington, D.C. results to not pursue an arrest of this individual at this time, but to await a more opportune moment in the future that better fits the current investigative strategy." *(AS 253 in ON 10a).*

In particular this last e-mail shows that the person affected or the extradition request is not a "meaningless routine act", but that – in addition to the FBI whose representatives were prominently present at the Vienna District Court for Criminal Matters after the arrest of the person affected – the Ministry of Foreign Affairs and the Ministry of Justice dealt with this case in detail at the weekend. On the basis of the general life experience, it must also be assumed that these high-ranking authorities were also involved in this proceedings before the request for arrest was received on an express basis.

It is therefore certain that the US authorities sent a very urgent request on 30 October 2013 by e-mail and fax for the arrest of the person

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affected – after this approach had probably been "discussed" at the same level as its withdrawal – in order to then withdraw it again in the same urgent and express manner only a couple of days later at 10.00 pm for "strategic reasons".

Only on 27 February 2014 a fresh request of virtually the same content for the request of the person affected was received.

Before the events at the end of October/beginning of November 2013 in Ukraine are discussed, the answers of the US authorities to court questions regarding the reason for withdrawing the request for arrest will be presented.

In an initial note of 21 July 2014 (ON 58, Item d) the US authorities were requested via the Federal Ministry for Justice (ON 59) to notify, amongst other things, "what reasons existed that an order to arrest already authorised by court on 1 November 2013 ... was ultimately not executed at the request of the requesting authorities and withdrawn".

The reply from the US Department of Justice of 25 August 2014 was (AS 22 in ON 68):

"Considerations on the part of the US enforcement authorities in connection with the planning of an arrest, within the United States of America or abroad, are in no way related to the evidence that supports the criminal indictment and the sufficient level of evidence for the

purpose of extradition. For the sufficient level of evidence to support the charges, it is not relevant whether Firtash was temporarily arrested in November 2013 or in March 2014."

In addition, it was also noted that the bill of indictment was also provided in June 2013 and that nothing has changed about its validity and soundness, but that the evidence has actually *"become stronger"* (AS 23 in ON 68) .

This reply letter from the US authorities documents two things:

On the one hand, it is expressly explained by the US authorities that the sudden withdrawal of the request for arrest is not connected to any evidence, results of evidence or deficiencies of evidence in the requesting state and that there are no indications at the level of evidence in the two requests that would justify the withdrawal of the request.

On the other hand, it must be noted that the US authorities replied to the question why the request for arrest was withdrawn with a list of reasons that did not result in the request being withdrawn.

However, a reply to the question put to them cannot be identified in this list.

As the original question was not as such confusingly worded and the reply to it could not be considered to be satisfactory in any way by the court, a fresh letter was sent to the requesting authorities in this matter.

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As such, by note of 4 March 2014 (ON 91) – with which the date of the extradition hearing was also announced – the following text, amongst other things, was also transmitted at the court's request via the Federal Ministry for Justice:

"... the US authorities should be granted the opportunity to answer the question, which remained unanswered in their statement of 20 August 2014, Item IV, about the reasons for the withdrawal of the original request for arrest. The US authorities should be reminded in this context of Article 4(3) of the extradition treaty between the government of the Republic of Austria and the government of the United States of America and (also) of the presentation of the person affected made with this aim.

However, the requesting authorities reserve the right to answer the questions put to them and to invalidate the presentation made by the person affected; the decision will ultimately need to be made on the basis of the extradition documents in the file."

With this letter, the US authorities were granted for a second time the opportunity to answer the questions put to them that had remained unanswered and express reference was made to the presentation of the person affected that this approach suggests the suspicion of a political

motivation. The US authorities were also expressly informed that, although they have the right to leave questions unanswered, the court will then rule on the basis of the situation of the file (containing the extradition documents submitted).

An actually – in court correspondence – unmistakable indication, it will also be clear to the US authorities that an Austrian extradition court does not put questions to it without reason and expects an objective reply to them.

Attached to this note were also extracts of the written presentation of the person affected in order to inform the US authorities specifically of the submission of this question, although they have absolutely no right to view the file in the extradition proceedings and the extradition court – regardless of which state is requesting extradition – is also not subject to the obligation to request the requesting state to answer simple questions in an urging manner.

The reply from the US authorities (ON 98) to this letter is to be considered as certainly remarkable.

For instance, the US authorities explained, amongst other things, that "... *during the decision on when and where the arrest of Firtash is to be requested, jurisdictions were considered that are known for executing extradition proceedings promptly and that would not be prone to attempts of disrupting the ordinary court extradition process (sic!).*"

(A (clearly unpleasant) question from the Austrian extradition court

was therefore answered by saying that Austria had been chosen as a jurisdiction, amongst other things, also because they were of the opinion that it would not disturb the ordinary court extradition process.)

After filing the charges in June 2013, the United States claim to have unsuccessfully attempted to locate and arrest the person affected in various countries outside of Austria. The request filed in November 2013 for his arrest was made, because "...the US investigators had more information that indicated that Firtash may travel via Austria. The United States withdrew the request for preliminary arrest... a couple of days after being sent for strategic reasons, which argued for attempting the arrest at a later time."

The US authorities then conducted investigations to arrest the person affected at another place outside of Austria or to prepare for this arrest, but they were unable until they "*...obtained fresh information indicating that Firtash would be in Austria in March 2014. This fresh information turned out to be correct."* (AS 4 in ON 98).

Regardless of the fact that the US authorities honour the Austrian criminal judiciary in this letter by stating that Austria "*is not prone to efforts to disrupt the ordinary court extradition process",* they explain repeatedly that strategic reasons existed for the withdrawal of the request for the arrest.

Again, repeatedly, they did not explain this strategy even remotely.

The sole strategic consideration, which could be derived from the explanations of the US authorities, is that the actual arrest of the person affected in October/November 2013 may have remained unsuccessful, as the person affected may not have been in Austria at this time (after all).

This "strategy", however, is not clear.

Why an instruction to arrest is withdrawn before it can be executed and for the reason that the execution may fail, is not clear despite major efforts to understand this. The possible consideration that the person affected may obtain knowledge of this from preparations of the actual arrest can be ruled out, considering that the preparations of his arrest were already in full swing and it is clear from the file notes of the Vienna Prosecutors' Office (As 3 in ON 1 ua) that in addition to the Federal Ministry for Justice, the Vienna Prosecutors' Office and the Vienna District Court for Criminal Matters as well as the police (Federal Criminal Police) were aware of the arrest order from the US authorities.

The actual arrest, which was imminent, would have informed the person affected of the proceedings in the US; a consequence that comes from an arrest.

As such, it is not clear even on a rudimentary basis why the US

authorities not even attempted to arrest FIRTASH and to wait for a possible apprehension of the person affected on 4 November 2013 before the request was withdrawn for "strategic reasons".

However, even if the US authorities had acted in such a way and the arrest had indeed been unsuccessful on 4 November 2013, the withdrawal of the request for arrest also makes no sense.

If the application for temporary arrest of the US authorities had continued to have been maintained, the person affected would (likely) have been wanted domestically and arrested on being stopped in Austria on the first occasion. The specific withdrawal of the arrest order is therefore not clear.

However, even less clear is the explanation given by the US authorities for this. If they believe that they conducted further examinations in the subsequent weeks to arrest FIRTASH in another country on another occasion, this merely supports the version that the US authorities did everything to arrest FIRTASH. However, why it is withdrawn on this assumption but before any potentially unsuccessful execution of the arrest on 4 November 2013, is even less clear.

The considerations of the US authorities to withdraw the arrest, which the court considers to be possible, would be that

a) the evidence results could no longer justify or substantiate an arrest.

- However, this was decidedly rejected by the US authorities in an initial reply.

b) the arrest is to be executed for criminal tactic considerations at a later date.

- This version was also negated by the US authorities, considering that they explained that they had tried to find suitable apprehension possibilities in other countries in the following weeks and then – in lack of alternatives – contacted the Austrian authorities again.

c) the arrest would fail.

- This explanation, set out by the US authorities, however, contradicts all logical principles of thinking and is not understandable for the extradition court; in particular taking into account the fresh request for arrest in February 2014.

d) the arrest of the person affected may have political backgrounds and therefore political effects.

-In this respect, a review or comparison of the events in October/November 2013 in Ukraine suggests itself:

The key point of these considerations must initially be the summit arranged by the European Union and Ukraine on 28 – 29 November 2013

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in Vilnius, in which Ukraine or the then State President YANUKOVYCH should have signed the EU Association Agreement.

An agreement that, when following the conclusive explanations of Richard SAKWA in his expert report (AS 75 et seqq. in ON 114), which can be brought in line perfectly with the later events in Crimea and the global reporting, was highly explosive geopolitically.

For Russia, for the European Union, for the US and, of course, for Ukraine.

Part of the EU Association Agreement was, amongst other things, also the deep and comprehensive free-trade agreement DCFTA, which intended a comprehensive liberalisation of trade between Ukraine and the European Union. Although no promise of a later accession of Ukraine as a member of the EU was given by the EU and Ukraine was also not to be granted "candidate status" by signing the EU Association Agreement, it was clear that the signing would mean an economic and geopolitical association of Ukraine with the West, in particular with the European Union, also in foreign and security policy matters.

No detailed and broad research of global politics is required to assume with certainty that all of this contradicted and contradicts the interests of Russia.

The Ukrainian border is in its closest position not much more than 800 kilometres from Moscow; a fact that "may" also be perceived to be a

threat by Russia in the event of a – military – association of Ukraine with the West.

Russia was the biggest trade partner for Ukraine and accounted for 24% of its exports and 30% of its imports in 2013. Natural gas made up a large share of imports, while metals, machines and agricultural goods made up a large proportion of the exports. Russia buys industrial goods from Ukraine, which could not find sales markets in the West.

The economies – as Richard SAKWA shows clearly and illustratively (AS 77 in ON 114) – supplemented one another very strongly, as they formed a union over centuries and shared the Soviet industrialisation efforts.

It is therefore not a surprise that Russia endeavoured to prevent the signing of the EU Association Agreement.

Russia in fact pursued the plan to integrate Ukraine in an association that should become the Eurasian Economic Union.

For Russia, it seemed likely that Ukraine would become part of the Western alliance system on the signing of the EU Association Agreement and therefore a country whose fate Russia shared for more than a millennium was turning its back on it.

For that reason, Russia began, at the latest in summer 2013, to exert pressure on Ukraine and imposed on Ukraine a series of sanctions and restrictions.

The witness LOVOCHKIN, at the time a key employee of YANUKOVYCH, also noted that he waivered very strongly in his decision and was greatly influenced by both sides – Russia and the members of the Customs Union on the one hand, the EU and the US on

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the other hand – and this information is also corroborated by that provided by the witness BOYKO.

The person affected also noted credibly during his interrogation in the extradition hearing that YANUKOVYCH was sitting on the fence and he, FIRTASH, advised him accordingly as a representative of the Association of Employers not to sign this form, as he believed that this would only be beneficial for Ukraine if Russia were integrated.

In mid-October 2013 Russia intensified its pressure on Ukraine.

As such, on 16 October 2013 Gazprom raised the prices for Ukraine, while also declaring its willingness to grant Ostchem (which is associated with the person affected) a 35% price discount.

Between 23 and 25 October 2013, a meeting was held in Minsk during the summit of the Eurasian Economic Council (in which Ukraine had the status of an observer from May 2013) involving PUTIN and YANUKOVYCH, in which it can be assumed that PUTIN again exerted pressure on YANUKOVYCH, and again saw YANUKOVYCH another time on 27 October 2013 in an informal meeting in Sochi.

Clearly without the success Russia was aiming for.

On 30 October 2013 Russia therefore called a billion US dollar gas debt.

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This clearly triggered action by representatives of the European Union and of the US to also meet with YANUKOVYCH, likely for the sole reason that they (correctly, as later became clear) feared that YANUKOVYCH would not sign the EU Association Agreement. For that reason, representatives of these countries, on behalf of the US, i.e. Victoria NULAND, in charge of Europe and Eurasia in the State Department, to Ukraine.

As such, on 30 October 2013 it was announced by the US State Department NULAND was planning a trip to Kiev in order to meet with YANUKOVYCH. In the first November days, NULAND was indeed in Kiev to meet YANUKOVYCH and on to announce to the world on 4 November 2013 "mission accomplished".

The fact that there was a meeting between NULAND and YANUKOVYCH is undisputed and is also confirmed by LOVOCHKIN within the framework of his court interrogation, who noted that YANUKOVYCH prepared for the meeting in great detail.

Although none of the witnesses interrogated were directly involved in the meeting between NULAND/YANUKOVYCH, it can be assumed that YANUKOVYCH accepted the "demands" of NULAND. The exceptionally positive reaction of NULAND after the meeting cannot be explained in any other way.

The person affected himself stated that YANUKOVYCH promised her that he would sign the EU Association Agreement, release Yulia TYMOSHENKO for medical treatment in Europe (also a demand from the European Union for the signature of the agreement) and that the so-

called Chevron deal would be concluded, which secured mining areas in the Kharkiv region for the US company Chevron, a globally active energy group based in California.

If the actions of the US authorities are now pitted against the actions around the EU Association Agreement, extremely close collaboration cannot be missed.

When considering the circumstance, which has already been explained in detail, that the person affected was a close adviser of YANUKOVYCH at the time, also from his position in the Association of Employers, and was against the signing of the EU Association Agreement in this form (without the involvement of Russia), was also assessed by the US authorities as pro-Russian, the question arises whether this interrelations in terms of time are actually a coincidence or not.

As noted, the US authorities sent an extremely urgent request on 30 October 2013 for the preliminary arrest of the person affected to the Austrian authorities, and therefore at precisely the time when the US clearly feared due to the meeting between PUTIN and YANUKOVYCH and the Russian sanctions on Ukraine that Ukraine would move away from the EU Association Agreement route taken and sent a high-ranking representative of the US State Department to Kiev.

Conspicuous for everyone is the fact that at the same time as the trip of NULAND to Kiev, the US Department of Justice had with it an

arrest warrant for one of the most influential people in Ukraine, who was close to YANUKOVYCH.

According to the explanations of the requesting authorities, this is a coincidence.

Also in an exceptionally "conspicuous" connection in terms of time is the equally sudden and urgent withdrawal, which has not been explained to date, of the request for arrest, starting with an e-mail in the night of 2 November 2013 until finally on 4 November 2013 (the US authorities assumed FIRTASH would be in Vienna from 4 November 2013) with the outcome of the meeting between YANUKOVYCH and NULAND, which – at least at that time – progressed in an extremely positive manner for the US.

Regardless of the fact that it cannot be determined to what extent the meeting of 4 November 2013 was prepared by so-called "advance talks" at "official level" and from when exactly the US knew of the intention of YANUKOVYCH to give positive signs, everyone must ask themselves the question:

Does that sudden withdrawal of the request for the arrest of the person affected have to do with the (at the time positive progress for the US) of the talks in Kiev or is this connection as regards the time – as potentially that of sending the request for arrest on 30 October 2013 – a mere coincidence?

Did two hugely significant events in Ukraine, in which the US was massively involved, coincidentally occur within just a couple days along

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with the actions of the US against the person affected?

Does the US Department of Justice file a request for the arrest of an extremely influential person sceptical about the EU Association Agreement in those days when the political leadership of Ukraine – to put it precisely – should decide "for or against the West" in a case in which it has had a national arrest warrant and has been investigating for years coincidentally just when representatives of the US Department of State are travelling to Kiev to influence YANUKOVYCH?

And does the U.S. Department of Justice coincidentally withdraw this request for arrest as quickly as it submitted it precisely on those days when these talks are progressing positively – as the US authorities represented by Steven L. Paulson note themselves (AS 253 in ON 10a) after consultation with "senior officials" of the US Department of State (!)?

If one takes the opinion that these certainly extremely remarkable concatenations of geopolitical events in Ukraine with the also not really clear actions of the US authorities regarding the extradition proceedings in Austria are not a matter of coincidence, this is a very dense and weighty indication that the extradition request initiated by the US authorities has – at least also – a political background.

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However, as YANUKOVYCH failed to keep his promise or declaration of intent to sign the EU Association Agreement, resulting in the (geo)political circumstances in Ukraine not remaining stable, but triggering unrest, the Austrian extradition proceedings – quite literally shelved by the US for some months – should become significant again, in particular for the US.

Even if the Vienne Prosecutors' Office terminated the extradition proceedings due to the withdrawal of all requests on 6 November 2013, a fresh request, with nearly the same content, for the arrest was received by the Austrian authorities in spring 2014.

As such, the US authorities sent – in advance by e-mail to the Federal Ministry for Justice – on 27 February 2014 a fresh request for the preliminary arrest of the person affected and referred in this e-mail also to the former request already submitted on 30 October 2013 in exclusion of the documents already sent then (AS 3 or 13 et seq. in ON 11).

In a letter sent to the Federal Ministry for Justice sent on 11 March 2014 (AS 3 in ON 13), the US authorities explained that the person affected travelled from France to Vienna on 10 March 2014 in order to travel onwards to London on 12 March 2014 (incidentally a strong indication that the US authorities knew of the travel movements of the person affected).

On 12 March 2014 the Vienna District Court for Criminal Matters then authorised the arrest order of the Vienna Prosecutors' Office (ON

14) and the person affected was arrested on the same day.

The further proceedings rulings until the first-instance ruling were already set out in the introduction to this judgment.

The events considered to be strange by the extradition court in the process of the verification of the provided bail by the Federal Criminal Office are specified in file notes of 21 March 2014 (AS 12 and, in particular 17 et seq. in ON 1) and do not need any further explanation; also as they are in no direct relation to the extradition ruling.

The question also arises why the request for the preliminary arrest and subsequently the extradition request – more or less of the same content – was freshly sent in March 2014.

Also in this regard, the (above all) political events in Ukraine must be considered:

As presented above, YANUKOVYCH gave the impression on 4 November 2013 with representatives of the US and the EU he would sign the EU Association Agreement.

However, he did not do that.

A fact that – to anticipate the events – resulted in protests in Ukraine, in particular on Maidan, and was later referred to as

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Euromaidan, which ultimately led to the flight of YANUKOVYCH and the emergence of a power vacuum in Ukraine.

YANUKOVYCH announced on 21 November 2013, in the last minute, that he would not sign the EU Association Agreement and thereby triggered a wave of protest on Maidan, which evolved into severe unrest.

Every citizen with an interest in foreign policy will remember the images.

Richard SAKWA explains correctly in his expert report, likely also taking into account the subsequent Crimea crisis (AS 79 in ON 114):

"The domestic revolution and regime change, civil war and most serious international conflict since the end of the Cold War were the result."

In order to show any interrelations between the political events in Ukraine and the US extradition request, the political developments during Euromaidan need to be presented.

The protests of the Ukrainian population on Maidan finally resulted in YANUKOVYCH fleeing on 22 February 2014, thereby causing a power vacuum.

The previous speak of the parliament Oleksandr Turchynov was elected interim President on the following day. This new government (which consisted of members of the opposition) was confirmed by 27 February 2014 by the parliament (Russia referred to it as a "government supported by a putsch" at the time).

Oleksandr Turchynov himself was said to be close to Yulia TYMOSHENKO (as the ORF TV channel also reported - http://orf.at/stories/221944 6/2219447/).

Virtually at the same time, Yulia TYMOSHENKO was released from prison on the same day and – sat in her wheelchair – held a speech in Kiev on the evening of 22 February 2014 (these images are also remembered by anyone who has a political interest).

As can be founding numerous, global media reports (see also *http://orf.at/stories/2219618/2219538/)*, she called on the people in her speech to continue to oppose YANKUKOVYCH and his allies and also announced that she would stand in the upcoming presidential election as a candidate.

On 25 February 2014 the candidacy of TYMOSHENKO was faced with a first prominent opponent: Vitali KLITCHKO.

KLITCHKO announced on 25 February 2014 that he planned to stand in the elections for the office of president scheduled for 25 May 2014 against TYMOSHENKO. This is can also be read in numerous media reports *(http://diepresse.com/home/politik/aussenpolitik/1567107/Klitschko-kandidiert-bei-Praesidentschaftswahl)*.

As became known later, KLITCHKO was not the favourite candidate of the US authorities.

For instance, a recording of a leaked telephone call between

Victoria NULAND and the US ambassador in Kiev, Geoffrey PYATT, appeared, whose content was also later not refuted by the US authorities.

In it she expressed clearly that Klitchko was not the right man at the head of Ukraine for the US.

For instance, the German news magazine Focus reports the following: "The US representatives did not seem to be enthusiastic about the idea that Klitchko could become Deputy Prime Minister. "Klitchko matter is clearly the complicated electron here," is Pyatt's comment in the recorded telephone call. The boxing world champion should not take up the office and "do his political homework". Nuland is also sceptical of an involvement of Klitchko in the government: "I don't think that that is necessary and a good idea." (http://www.focus.de/politik/ausland/fuck-the-eu-europa-beauftragte-der-usa-leistet-sich-diplomatischen-patzer_id_3597077.html)

On the homepage of the BBC, for instance, the transcript of the telephone call can be read.

PYATT said: "The Klitchko [Vitaly Klitchko, one of three main opposition leaders] piece is obviously the complicated electron here. Especially the announcement of him as deputy prime minister and you've seen some of my notes on the troubles in the marriage right now so we're trying to get a read really fast on where he is on this stuff."

NULAND replied:

"I don't think Klitchko should go into the government. I don't think it's necessary, I don't think it's a good idea..."

and then: "I think Yats is the guy who's got the economic experience, the governing experience..." (http://www.bbc.com/news/world-europe-26079957)

It becomes objectifiable from this that the US preferred Arseny YATSENYUK as the president of Ukraine and not Klitchko, the former also being a confidant of TYMOSHENKO.

This was also confirmed by the information from the witnesses within the framework of the extradition hearing.

For instance, KLITCHKO himself replied to the question whether it is correct that TYMOSHENKO and its members were those who were preferred by the US and all those who supported him were their opponents with Yes, although he added that he could not be objective in this (his own) matter (AS 245 in ON 139).

The witness KRAVCHUK also confirmed to have at least heard of the US that "they mentioned a good opinion" about YATSENYUK (AS 259 in ON 139).

Inna BOGOSLOVSKAYA noted that she can say quite precisely "that during Maidan, the United States supported YATSENYUK", even if she cannot assess why they opted against KLITCHKO in this process (AS 307 in ON 139).

Finally, LOVOCHKIN also said that the opinion of the US about

KLITCHKO was not bad, but in private meetings he often heard the name YATSENYUK, who was the priority for the US (AS 273 in ON 139).

The reason why the (on balance) negative stance of the US in relation to a candidacy of KLITCHKO and the wish to see YATSENYUK at the top (be it as the President or Prime Minister) of Ukraine in the substantiation of the ruling can be found in the supporter of Vitali KLITCHKO: Dmitry FIRTASH.

The person affected supported KLITCHKO already before the flight of YANUKOVYCH and wanted to position him for the succession of YANUKOVYCH. After the flight of YANUKOVYCH, the early elections and the release of TYMOSHENKO, all the more so probably.

The fact that FIRTASH was a supporter of KLITCHKO was not only stated by the person affected himself, but was also confirmed by KLITCHKO. The witnesses BOYKO and KRAVCHUK also had this impression. It was most clearly worded by Inna BOGOSLOVSKAYA, who noted that "...at this time all of Ukraine knew that... Firtash supported the candidacy of Klitchko " (AS 303 in ON 139).

If it is now considered that the person affected is a major factor in favour of the candidate he supports in an election due to his influence in Ukraine, one remembers that the support of FIRTASH was already (at

least) not irrelevant in the narrow election victory of YANUKOVYCH over TYMOSHENKO in 2010;

When considering that on 22 February 2014 YANUKOVYCH flees Kiev, Yulia TYMOSHENKO announces to stand for the office of president, a couple of days later Vitali KLITCHKO announces his own candidacy and everyone knows that KLITCHKO has an extremely influential backer in the person affected (who probably wanted to avoid an election victory of TYMOSHENKO and her confidants, which include YATSENYUK, as was the case in 2010), then the following stands out:

Precisely in those days, i.e. on 27 February 2014, the US authorities contact the Federal Ministry for Justice for a second time (by e-mail) and ask for the preliminary arrest of Dmitry FIRTASH (AS 3 or 13 et seq. in ON 11).

Again the question must be asked whether this is a mere coincidence.

When considering the detailed explanations on the figure of the person affected, on the geopolitical importance, the interests of the US, the rivalry of the person affected with TYMOSHENKO and many other circumstances presented above, the indications are so dense and comprehensive that the answer must be no if considered objectively.

Regardless of the fact that the witnesses questioned, above all Inna BOGOSLOVSKAYA – who clearly also has a rivalry with

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TYMOSHENKO –, are of the clear opinion that the extradition request of the US authorities was filed for political reasons, this can be quite obviously derived from the events alone.

The political motivation is not supported on the basis of the subjective perception or opinions of witnesses. Their interrogation, selected by the court in a targeted manner, was "merely" used to discuss the potential backgrounds of a political motivation:

- The political situation in Ukraine;
- The position of the person affected in Ukraine;
- The interests of the requesting state there;
- The events in October/November 2013 as well as during Euromaidan.

The subjective opinion of the witnesses whether and why the US filed the extradition request for political reasons, and this is expressly emphasised, was in no shape or form the basis of the court determinations in this area.

Also, no comments, explanations or newspaper articles in the broader sense from experts, commentators, so-called experts or journalists in this specific matter were of any relevance and were therefore also not included in the substantiation of the judgment.

The finding that the extradition request of the US was also politically motivated, meaning that Article 4(3) Extradition Treaty contradicts an approval, was substantiated by the court solely on the basis of a comparison of objective events (for a better understanding of

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which the selected witnesses were heard) in Ukraine with the actions or declarations of the US within the framework of the extradition proceedings. The comments and web links noted in the judgment document largely refer exclusively to publicly accessible and uncontested events in Ukraine.

As such, the following is again summarised:

The US authorities are persecuting a Ukrainian national, as he is being accused of having bribed officials in India from Ukraine in order to obtain a mining licence for titanium. An allegation that does not indicate any jurisdiction of the US authorities at first sight.

FIRTASH is viewed as an exceptionally influential person in Ukraine and was a supporter and, in particular, adviser of YANUKOVYCH during the latter's presidency.

As the first indications became known that YANUKOVYCH – on pressure from Russia – was casting doubt on the signing of the EU Association Agreement, a US delegation travels to Kiev to "bring him in line". In parallel, the US authorities request the arrest of one of his closest advisers and one of the most influential people in Ukraine. When the talks progress positively, this request for arrest is withdrawn without

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any clear reason. It is clear that both the request for preliminary arrest and its withdrawal were connected to the NULAND/YANUKOVYCH talks. The US authorities intended to have at their disposal a trump in order to indicate that they are able to arrest one of the most powerful oligarchs in Ukraine and associate of YANUKOVYCH.

When this trump is no longer needed, the request is withdrawn.

Only to renew it in February 2014 in a politically highly explosive phase.

The aim was clearly to prevent the person affected – as in 2010 – from undermining the political interests of the US (Yatsenyuk), and with his arrest he was to be removed from Ukrainian politics, probably to prevent him from again supporting those candidates clearly not favoured by the US.

The fact that the arrest of FIRTASH took place at nearly the same time as the release of his long-standing opponent TYMOSHENKO rounds off the clear picture.

What is more, the US authorities attempted to freeze the assets in parallel with the extradition proceedings within the framework of a legal assistance proceedings conducted as a domestic proceedings, albeit unsuccessfully.

This political background shows clearly and obviously that the extradition request of the United States of America was at least also – regardless of whether the person affected is sufficiently suspected of the allegation or not – politically motivated.

The objection from the US authorities in this regard is not convincing and is in no way suitable to invalidate the findings.

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As such, the US authorities noted in their statement (AS 3 et seq. in ON 98) that the submission of the person affected claiming that the extradition request was politically motivated and the US authorities requested his arrest due to the political climate in Ukraine lacks any basis.

For instance, for more than five years already, starting from 2008, investigations have been conducted against the person affected, i.e. long before the political unrest in Ukraine. The co-accused individuals of the person affected are also not in any way linked to this.

The argument or the circumstance that the US authorities were investigating the person affected already many years before the political unrest in Ukraine is of major relevance, but it was put into perspective by the information provided by the witness PUTSCHEK.

According to his statement, the US authorities – as stated above – had already targeted his companies as trustor, RUE and therefore also FIRTASH, in 2006, and PUTSCHEK showed convincingly how the US authorities already tried at the time to intervene at the expense of RUE.

The fact that when the trust relationship was declared the requesting state had a higher interest in the person affected is certainly clear in light of the circumstance of what malversations the trustor faced.

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When the person affected then facilitated the election victory of YANUKOVYCH in 2010 and now also became active politically – albeit leaning towards the Russian side – the criminal law interest of the US in him will have increased strongly.

As such, it can be explained that the US authorities, even if they were unable to foresee the events from autumn 2013, already had a geopolitical interest in the person affected.

Regardless of this, however, it must be assumed that it is entirely irrelevant for the question whether an extradition request was filed at least also for political reasons whether the criminal proceedings initiated in the requesting state was (also) instigated for political reasons.

The extradition obstacle of Article 4(3) standardised in the extradition treaty is not based on the period of the investigations, but on the period of submitting the extradition request.

It is therefore not relevant for what reasons the US authorities started to investigate the person affected.

The fact that the time of submitting the extradition request (in connection with the first request for arrest) also had a political background was explained in detail and is beyond doubt for the first-instance extradition court.

For the reason that the requesting authorities were also given the opportunity to provide a statement precisely on the submission of the

person affected, and this option was also utilised, the application of the Vienna Prosecutors' Office to (again) put questions to the requesting authorities in this regard was to be dismissed.

The requesting authorities were informed of the submission (albeit in a strongly abbreviated form) and they were given the opportunity to make a statement (although a right to a statement from the requesting authorities does not exist in any event in an extradition proceedings for lack of the requesting state being a party in the proceedings).

In its – nevertheless requested – statement, the requesting authorities presented their position and it was included in the considerations of the extradition court.

The judgment was therefore to be upheld.

Re Item II./:

On the basis of the first-instance ruling, the instructions imposed on the person affected as in the judgment were to be reduced significantly.

It now seemed sufficient to the court to merely uphold the instruction (and the bail linked to it), that he could be summoned via his lawyers and to observe court summonses until the legally valid end of the extradition proceedings.

As the extradition request, although not legally in force, was dismissed and the person affected did also in the past not give the impression of wanting to abscond from the extradition proceedings, the collected passport could be returned and the person affected permitted to leave Austria. However, as the decision of the first-instance court did not acquire legal force and the consequences of a possible extradition for the person affected certainly offer an incentive to abscond (although this is considered to be smaller given the first-instance ruling), the full

lifting of the lower-level judicial means (including the return of the bail provided) was not to be justified.

As the permissibility of the extradition itself is not a requirement for imposing or continuing detention for the purposes of extradition (and therefore also the upholding of the lower-level judicial means substituting them), it was to be ruled in accordance with the judgment, as also becomes clear from Item II. / of the judgment.

Vienna District Court for Criminal Matters 1082 Vienna,
Landesgerichtsstrasse 11 Dept. 313, on 30 April 2015
Mag. Christoph Bauer Judge
Electronic copy in accordance with Section 79 GOG

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DISSEMINATED BY DAVIS, GOLDBERG & GALPER PLLC, A REGISTERED FOREIGN AGENT, ON BEHALF OF DMITRY FIRTASH. MORE INFORMATION IS ON FILE WITH THE DEPT OF JUSTICE, WASHINGTON DC.

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WITNESS STATEMENT

OF

VIKTOR MIKOLAJOVIĆH SHOKIN

I, Viktor Shokin, holding passport of Ukrainian citizen TT110010, issued by TUM-2 of Shevchenkivskyi DD of the MIA of Ukraine in Kiev, residing at flat 31, 14 Yaroslavov val, city of Kyiv, state as follows: -

1. I make this statement at the request of lawyers acting for Dmitry Firtash ("DF"), for use in legal proceedings in Austria. I do so entirely voluntarily and without any threat or inducement.

2. I am a former General Prosecutor of the Republic of Ukraine. I worked in the general prosecutor's office of Ukraine from May 1980 to 3 April 2016, at different times. I was Deputy Prosecutor of Ukraine on three separate occasions, from 2002 to 2003; from 2005 to 2007; and from 2014 to 2015. I was General Prosecutor of Ukraine from 10 February 2015 to 03 April 2016. I was dismissed from the position of General Prosecutor in the circumstances that I set out below.

3. In this witness statement I explain that during the period in which I worked as General Prosecutor of Ukraine:

   (a) DF announced publicly that he would return to Ukraine to address the employers of Ukraine on 2 December 2015, to launch his Plan for the Modernization of Ukraine;

   (b) US Vice President Joe Biden, who represented the US in its relations with Ukraine, together with Poroshenko and others in Ukraine such as the Minister

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of Internal Affairs, Avakov, took steps aimed at preventing DF's return to Ukraine. They resorted to extreme and desperate measures to do this. Indeed:

i) I found out from speeches given by the Minister of the Internal Affairs. Avakov, which were published in the media that the internal affairs authorities had been investigating three criminal cases, under which criminal charges could have been brought against DF. The media went on to report that if DF returned to the Ukraine he could have been detained and arrested. However, this was merely a pretext to take further action aimed at stopping DF from coming to Ukraine;

ii) Then Avakov stated in the media that DF would be arrested and prosecuted in Ukraine on US charges, that this was allegedly possible under Ukrainian law and that US state officials at the time had requested this action;

iii) However, I can testify that as General Prosecutor I did not receive any evidence or materials from anyone to support DF's involvement in criminality;

iv) It transpired that the actions above did not deter DF from returning, and so the Ukrainian government organised and endorsed a unit of ultra-right militia of the Azov battalion, to threaten DF by posting pictures of military-clad and armed members of the unit, wearing masks and patrolling the airport in waiting for DF to arrive;

v) In addition, the media also reported that Ukraine had closed its airspace to private jets.

(c) Therefore, it is clear to me that certain US officials from President Obama's administration, in particular the US Vice-President Joe Biden, directly manipulated the political leadership of Ukraine on false pretexts, in order to prevent DF from returning to Ukraine, as they were so concerned about him re-establishing public life there.

(d) DF did not travel to Ukrain. Vice President Joe Biden did, where he met with President Poroshenko on 6 December and addressed the Rada on 8 December.

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(e) If the US Presidential Administration had indeed wanted to prosecute DF, the correct legal procedure should have been followed. DF should have been subjected to the official procedure of criminal prosecution upon his arrival in Ukraine, on the basis of materials officially provided by the USA, and a detailed analysis of all the evidence and relevant legal provisions, in full compliance with Ukrainian law. In the absence of sufficient evidence he would have either been acquitted or the criminal proceedings would have been terminated. Consequently, all allegations against him would have been cleared. However, instead of this, state officials from the US Presidential Administration, who had substantial influence on the entire law-enforcement system of Ukraine (my own dismissal being evidence of such influence – see below), did not take any actions in regards to bringing criminal charges against DF in Ukraine. Therefore, I believe that having realised that they could not mount a sustainable prosecution in Ukraine, and following their recent loss in respect of the extradition case in Austria, they took active steps in order to block his return to Ukraine.

(f) Had DF arrived in Ukraine, there was a real possibility of an attempt being made on his life, whether on orders or unilaterally by an extremist 'serving his country'. And I hereby confirm that as General Prosecutor, I would never have permitted DF to be detained for political reasons, especially as I know for a fact that there were no criminal grounds on which to detain and prosecute him.

(g) This instance of interference in Ukraine's affairs by US officials to achieve US objectives (barring DF's return to public life in Ukraine) was closely followed by another instance of interference, namely forcing Poroshenko to dismiss me because my actions as General Prosecutor did not suit the interests of the US Vice-President Biden and the persons connected to him.

4. I now set out the details.

5. The General Prosecutor of Ukraine is appointed to office by the President of Ukraine with the consent of the Verkhovna Rada ('the Rada', i.e. parliament). I was accordingly appointed during the presidency of President Poroshenko by 318

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votes of members of the Ukrainian Parliament, which constituted a constitutional majority. Whilst occupying this post I was staunchly politically unaffiliated.

6. The circumstances of my dismissal were that I tendered my resignation to the Rada at the request of President Poroshenko. Poroshenko asked me to resign due to pressure from the US Presidential administration, in particular from Joe Biden, who was the US Vice-President. Biden was threatening to withhold USD$ 1 billion in subsidies to Ukraine until I was removed from office. After I yielded to the President's request and submitted my voluntary resignation, Poroshenko commented about it in the media. He said that I had carried out a colossal amount of work as General Prosecutor, which is something none of my predecessors had been able to do, especially with regards to my work on reforming the different bodies of the prosecutor's office, on creating the Specialised Anticorruption Prosecutor's Office, which enabled the National Anti-Corruption Bureau of Ukraine to conduct legal work, and on creating self-governing prosecution authorities.

7. The official reason put forward for my dismissal was that I had allegedly failed to secure the public's trust. Poroshenko and other state officials, including representatives of the US presidential administration, had never previously had any complaints about my work, however. There were no grievances against me or any allegations that had I committed any corruption-related (or, indeed any other) criminal offenses. Biden never stated anything of the kind either. Furthermore, all sanctions in respect of Yanukovich and his supporters remained in force and were not lifted whilst I occupied the post. Moreover, these sanctions were extended.

8. The truth is that I was forced out because I was leading a wide-ranging corruption probe into Burisma Holdings ("Burisma"), a natural gas firm active in Ukraine, and Joe Biden's son, Hunter Biden, was a member of the Board of Directors. I assume Burisma, which was connected with gas extraction, had the support of the US Vice-President Joe Biden because his son was on the Board of Directors.

9. On several occasions President Poroshenko asked me to have a look at the criminal case against Burisma and consider the possibility of winding down the investigative actions in respect of this company, but I refused to close this investigation. Therefore, I was forced to leave office, under direct and intense pressure from Joe Biden and the US administration. In my conversations with Poroshenko at the time, he was emphatic

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that I should cease my investigations regarding Burisma. When I did not, he said that the US (via Biden) were refusing to release the USD$ 1 billion promised to Ukraine. He said that he had no choice, therefore, but to ask me to resign.

10. When Poroshenko asked me to resign, the way that he put it to me was that he was making it for the good of our country, and that I should agree, also as an act of patriotism. I agreed to tender my resignation on this basis.

11. After my dismissal Joe Biden made a public statement[1], saying – even bragging – that he had me fired. This is when it became clear that the real reason for my dismissal was my actions regarding in Burisma and Biden's personal interest in that company, which was demonstrated by the following:

    a) it was Biden's order and wish that I be removed from office, not Poroshenko's decision;
    b) the reason was because it was precisely the state officials from the US administration of President Obama – and Joe Biden in particular - who were telling the heads of the Ukraine law-enforcement system how to investigate and whom to investigate, including members of the Yanukovych regime team. I was not complying with their will (in respect of Zlochevsky, in particular, who was a minister under Yanukovich) so I had to be removed from office;
    c) it was not Poroshenko being patriotic, it was Poroshenko submitting to the demands of state officials from the US administration of President Obama for reasons of political economy and the personal interests of the US Vice President Biden, amongst others.

12. When I found out about the actual reason for my dismissal from Biden's statement, I went to the courts and asked for recognition that I had been forced to submit my 'voluntary' resignation (and therefore that my dismissal be declared unlawful). I was refused to have my case examined on its merits due to the fact that I had supposedly missed the deadlines for applying to the courts. When I had exhausted all domestic legal remedies, I petitioned the ECtHR, on the basis that my fundamental rights had been breached and that my dismissal was politically motivated and therefore unlawful.

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1 See, *Law and Crime.com*, "Biden Reportedly 'Bragged' About the Firing of a Prosecutor Who Was Investigating His Son's Firm", 2 April 2019, available at: https://lawandcrime.com/high-profile/biden-reportedly-bragged-about-the-firing-of-a-prosecutor-who-was-investigating-his-sons-firm/

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13. DF won his extradition case in Austria at first instance, on 30 April 2015, while I was General Prosecutor of Ukraine. This was widely reported in the media at the time. It was also subsequently reported that he intended to come back to Ukraine, in order to address the General Assembly of the Federation of Employers of Ukraine ("FEU") on 2 December 2015. He was the head of the FEU.

14. It was public knowledge that in March 2015, DF and the FEU established a body called the Agency for the Modernization of Ukraine to develop a comprehensive plan for the economic revival of Ukraine, involving massive investment into Ukraine. It was called the Plan for the Modernization of Ukraine, and it was also public knowledge that it was to be presented specifically by DF at the FEU event on 2 December 2015[2].

15. During this period I was present in meetings with Poroshenko, as were the heads of other law-enforcement authorities of Ukraine, in which the matter of barring DF from returning to Ukraine was discussed, although I was not specifically addressed on the issue.

16. Based on the outcome of these meetings, I believe that the initiative and main motivation on barring DF from returning to Ukraine was coming mostly from state officials of the US administration, especially from Biden.

17. This was not a secret. Everyone knew it and it was in the media that state officials from the US Administration of President Obama stood behind the intense and aggressive warnings to DF not to return. For example, one article on 3 December 2015 had the title "A Ukrainian oligarch's foiled homecoming. The U.S. and the government in Kiev want Dmytro Firtash behind bars"[3]. It said that: "Avakov announced on Sunday that, *after consulting with U.S. officials*, he instructed Ukrainian police to detain Firtash should he attempt to enter Ukraine" (emphasis supplied).

18. Biden, Poroshenko and Avakov were determined to prevent DF from coming to Ukraine; they were absolutely resolute. The media was used to deliver a very strong message, loud and clear, to DF not to come to Ukraine. Photos of armed paramilitaries waiting for DF were taken and posted on the internet (including on Avakov's Facebook

[2] See for example: http://en.dmitry.firtash.com/activity/agency_for_the_modernization_of_ukraine.
[3] See *Politico*, "A Ukrainian oligarch's foiled homecoming", 12 March 2015, https://www.politico.eu/article/firtash-poroshenko-ukraine-oligarchs-corruption

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page), and the Ukrainian airspace was closed at the end of November, in order to prevent DF coming to Ukraine.

19. For example, the media reported:

> "Andriy Biletsky, commander of Ukraine's nationalist Azov Battalion, said that his volunteer fighters would arrest Firtash themselves if government forces failed to do so. He later posted a Facebook photo of his armed men waiting at Kiev's Borispol airport"[4].

20. Back then, at a press conference I, as the General Prosecutor, was asked about how I would treat Firtash upon his return to Ukraine. Knowing that there were no criminal cases against him in my office and knowing that the situation was the same in other offices as well, I replied that I would greet him with a bunch of flowers, and suggested that he contact Avakov in this regard. As the General Prosecutor and an Honoured Legal Professional of Ukraine, I knew that there were only two legal scenarios in which DF could be detained in Ukraine. The first is that Ukraine would prosecute DF for crimes committed in Ukraine; the second was for DF to be prosecuted in Ukraine on the basis of allegations and materials handed over to us by the US.

21. Under Ukrainian law, DF could not be extradited because he is a national of Ukraine and we do not extradite our nationals. However, Ukrainian nationals can be prosecuted for crimes committed in another country on the basis of the materials provided by this country.

22. Avakov stated publicly to the media that if DF arrived in Kiev, he would be detained and prosecuted, but the truth is that there was no evidence that DF had committed any crimes in Ukraine. Avakov later admitted as much publicly.

23. Had there been any evidence of criminality by DF in Ukraine, the General Prosecutor's Office would have been aware of it. There was no such evidence. Regarding the absence of domestic charges, the MVD (Ministry of Internal Affairs) spokesman, Artem Shevchenko, stated on 26 November that:

> "The MVD of Ukraine does not have any criminal proceedings in which businessman Dmitry Firtash is named as a suspect, though there is a case relating

[4] See *Politico*, "A Ukrainian oligarch's foiled homecoming", 12 March 2015, https://www.politico.eu/article/firtash-poroshenko-ukraine-oligarchs-corruption/

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to the Ostchem group of companies in which he has been summoned to be interviewed as a witness"[5].

24. Once it was admitted that there was no basis on which to arrest DF for crimes committed in Ukraine, the US officials and the Interior Ministry of Ukraine switched to the US charges. Thus, on 29 November 2015, the MVD issued a statement with the title: "Dmitry Firtash will be detained on his arrival on request from *US Department of Justice*"[6] (my emphasis).

25. According to this press statement, Minister Avakov said that Ukraine had offered to take over the criminal proceedings against DF instigated in the US and to prosecute him on those charges in Ukraine. As I say, Ukraine's law allows for this. However, our law does not allow him to be detained for 40 days as a Ukrainian national.

26. On the same day, Avakov wrote on his Facebook page that DF would be detained on arrival following an application from the US Department of Justice and that the *relevant consultations with the US had already been concluded*[7].

27. It is my testimony that as the General Prosecutor, I was not provided with any evidence proving DF's guilt in committing any crimes either in Ukraine or other countries, including the US. I know for a fact that under Ukrainian law, when a foreign state (here the US) seeks criminal prosecution of an individual in circumstances where there has not yet been a verdict of that person (such as in DF's case – he was wanted in Austria *in order* to be tried), the responsible body for receiving and dealing with such requests is the General Prosecutor's Office. Where there *has* been a criminal verdict, it is the Ministry of Justice.

28. As there had been no verdict in DF's case, it was the exclusive competence of the General Prosecutor's Office to receive any request for a criminal prosecution of DF, as well as all underlying evidence to support a criminal prosecution. As I have said, no such evidence was provided, notwithstanding the fact that every measure had

[5] See *Ukrainska Pravda*, "Ukraine has closed its skies to charter flights. Is it because of Firtash?", 28 November 2015, http://www.pravda.com.ua/news/2015/11/28/7090554/

[6] See *Ministry of Internal Affairs of Ukraine*, "Dmitry Firtash Will Be Detained On His Arrival In Ukraine On Request From the US Ministry of Justice", 29 November 2015, http://www.npu.gov.ua/ru/publish/article/1731594

[7] *Ukrainska Pravda*, "Avakov: Firtash will be detained immediately on his arrival in Ukraine", 29 November 2015, http://www.pravda.com.ua/rus/news/2015/11/29/7090612/

supposedly been taken to detain DF upon arrival in Ukraine. Ukraine was going to great lengths to show its readiness to immediately detain DF if he arrived to Ukraine.

29. I can speculate that had DF arrived, he could have been detained under Ukrainian law at that time for up to 72 hours if there were grounds for suspecting that he had committed a crime on the territory of Ukraine. Of course, as I have said, there were no such grounds in DF's case. Further, I would never have allowed the General Prosecutor's Office to be used for political purposes of unfounded criminal prosecution of a person, so my office would not have allowed or assisted in detaining or prosecuting DF, either on Ukrainian or American charges, in the absence of sufficient credible evidence that such a crime or crimes had been committed.

30. I would add that all the actions and statements made by the then state officials from the US presidential administration, as well as the administration of Ukraine, were not aimed at DF's criminal prosecution, but at preventing his return to Ukraine. If they were interested in his criminal prosecution, they would have, on the contrary, created an environment in the media that would have made DF want to return to Ukraine and facilitated his arrival and criminal prosecution.

31. Therefore, in my opinion, the threat of DF's detention and criminal prosecution in Ukraine was the reason why he did not return to Ukraine. The actions committed by state officials from the US presidential administration during Obama's presidency and state officials of Ukraine in order to bar DF's return to Ukraine had nothing to do with DF's actual criminal prosecution. The true reasons for these actions, in my opinion, emerge from the following facts:

    a. DF was going to return to Kyiv in order to re-enter public life in Ukraine and present his development plan for stronger Ukraine;

    b. DF's arrival in Ukraine would have forced the US to produce sufficient evidence for DF's criminal prosecution on the US charges, but I (as General Prosecutor) never received any such evidence.

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32. Joe Biden was visiting Ukraine frequently at that time. He came again in December 2015. He met President Poroshenko on Sunday 6 December and addressed the Rada on Tuesday 8 December[8].

33. I am asked whether it was possible that there would have been a risk to DF's life he had not cancelled his return and arrived in Ukraine in late 2015. My answer is – potentially yes!

34. Based on my experience, as well as on my reading of the situation, this could have happened either as a result of an order to assassinate DF, as a result of the actions taken by a person with an extremist agenda, or a result of somebody's political order. In relation to DF, the message via the media could effectively have been seen as a license to "step up" and demonstrate the so-called "fake love" for the motherland by removing one of the most influential people in Ukraine (he controlled some of the media, as well as enterprises underpinning major business sectors in Ukraine). I would like to draw attention to what I have said above about the images of armed extremists in camouflage uniform and the images that could have given a message to the same ultra-right nationalist individuals set against Russia as a country with which DF had actively cooperated back in the day on business matters (Rosukrenergo).

35. In my opinion, the initiator of the prevention of DF's return to Ukraine was the US Vice President Biden. It was precisely on his initiative that Poroshenko and Avakov created psychological conditions for barring DF's return to Ukraine.

36. They had to do everything to prevent DF coming back to Ukraine. As there were no charges brought in Ukraine on allegations of crimes supposedly committed in Ukraine, the only possible reason to detain him beyond the initial permitted 72 hours was, in fact, the existence of credible evidence that he had committed crimes abroad, which could give rise to a verdict. I repeat that no such evidence was forwarded by the US. If it had, as General Prosecutor I would have been aware of it.

[8] For example, see *RFI*, "Biden visits Kiev to calm Ukrainian fears over Russia relations thaw", 7 December 2015, http://en.rfi.fr/europe/20151207-us-vice-president-visits-ukraine-adress-kiev-s-concerns.

37. The actions taken by Biden as a US overseer in Ukraine were not aimed at ensuring that DF was charged on the US charges, but at creating conditions for preventing his return to Ukraine.

38. The events relating to DF and Biden in 2015 reveal the extent of the US administration's interference with Ukrainian domestic affairs and the eagerness to exercise control with the aim of advancing US interests. An example confirming such interference is me being forced to resign from my role as General Prosecutor solely on the demands of the US Vice President, Joe Biden, because I refused to cease my probe into Burisma (in which Biden had significant interests), and because I would never have agreed to a politically motivated, unfounded criminal prosecution.

39. I have never met DF in person and my interests have never crossed with his. However, the steps taken by the state officials from the US presidential administration during Obama's presidency towards both of us demonstrate similar methods of isolating and removing people who do not serve their interests. This could be regarded as one line of actions committed by state officials in respect of people that had caught their attention.

STATEMENT OF TRUTH

I have given this statement orally in Russian. I have carefully read Ukrainian and Russian translation and confirm that it is entirely true to the best of my knowledge and belief. In case of disagreement between the Ukrainian and Russian languages, preference is given to Russian language. I am willing to attend court and testify on these matters before the Austrian authorities.

[Signature] *Shokin V.N.*

[QR Code]
HHX525925

City Ky-

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Facts mentioned at this statement have not been verified by the notary.
-yiv, Ukraine
the fourth of September two thousand nineteen.

I, Kh.V. Hornyak, a Private Notary of the Kyiv City Notary District, hereby certify the genuine signature of **Shokin Viktor Mykolayovych** made in my presence.

The identity and legal capacity of **Shokin Viktor Mykolayovych**, who signed the document, have been verified.

Herewith I certify that translation of the text from Ukrainian to Russian is true and made by myself.

Entered in the Register under **No.** *768,769*

Fee paid pursuant to Article 31 of the Law of Ukraine "On Notaries".

Private Notary: [signature] **Kh.V. Hornyak**

[seal of the Notary]

Цей переклад виконано мною, перекладачем Хмельницькою Б.О.

This translation is made by qualified translator Bogdana Khmelnytska

Місто Київ, Україна четвертого вересня дві тисячі дев'ятнадцятого року.

Я, Горняк Х.В., приватний нотаріус Київського міського нотаріального округу, засвідчую справжність підпису перекладача, Хмельницької Богдани Олександрівни, який зроблено у моїй присутності.

Особу перекладача встановлено, її дієздатність та кваліфікацію перевірено

Зареєстровано в реєстрі за № 770.

Сплачену плату згідно ст. 31 ЗУ «Про нотаріат»

Приватний нотаріус **Х.В. Горняк**

Всього прошито (або прошнуровано), пронумеровано і скріплено печаткою 13 (тринадцять) аркушів

DISSEMINATED BY DAVIS, GOLDBERG & GALPER PLLC, A REGISTERED FOREIGN AGENT, ON BEHALF OF DMITRY FIRTASH. MORE INFORMATION IS ON FILE WITH THE DEPT OF JUSTICE, WASHINGTON DC.

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DECEMBER 2, 2010 STATEMENT ON BEHALF OF MR DMITRY FIRTASH TO *THE GUARDIAN*

RELATING TO THE UNLAWFUL LEAKING OF US AMBASSADOR TAYLOR'S ALLEGED CONFIDENTIAL MEMO OF HIS MEETING WITH MR FIRTASH ON 8 DECEMBER 2008

The briefing with Ambassador Taylor was private and confidential and Mr Firtash wishes to respect the privacy of that meeting. Furthermore, Mr Firtash is not going to respond to statements allegedly contained in documents that - by the admission of those promoting them - were stolen from the United States government, in violation of federal criminal law, by people who are themselves now fugitives.

Mr Firtash provided the Ambassador with a private and confidential briefing on a variety of issues and addressed questions the Ambassador put to him. However, following the regrettable and unlawful publication of documents purporting to be the Ambassador's confidential notes of the meeting, Mr Firtash feels obliged to clear up any subsequent mistranslation or misunderstanding of their meeting.

Mr Firtash has never stated, to anyone, at any time, that he needed or received permission from Mr. Mogilevich to establish any of his businesses. Moreover, Mr Firtash has stated many times, publicly, privately and on the record that he knew Mr Mogilevich but has never had any partnership or other commercial association with him. This was also confirmed in an interview given by Mr Firtash to the Financial Times published on 13 July 2006.

Mr Firtash has always maintained and repeats, once again, that Mr Mogilevich has never had any holding or other direct or indirect interest in Eural Trans Gas, RosUkrenergo or indeed any of Mr Firtash's other commercial or business interests.

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Dmytro Firtash is innocent - and can help improve Ukraine - US relations

By Lanny J. Davis

Ukraine President Volodmyr Zelensky are meeting today at the White House. The two share much in common – especially a commitment to democracy and anti-corruption efforts in Ukraine and better relations between the two countries.

They also share their record of standing up to bullying and lies by former President Donald Trump. And both leaders are committed to reform and anti-corruption in Ukraine, and especially, the commitment of both nations to due process of law and the presumption of innocence.

That is why I am hoping both presidents will be open to reviewing the true facts about Dmytro Firtash. That means being open to the true facts about Mr. Firtash as opposed to the McCarthyite-type of US and European media, relying on guilt-by-association and fact-free innuendo. If they can do that, they may find some day that Mr. Firtash will surprise them on his commitment to democracy and anti-corruption measures in Ukraine and a close Ukraine-US relationship.

Here are some of key lies or "myths" broadly accepted in US and European media due because of such fact-free innuendo – and my *indisputable* facts in response.

Myth: Firtash has been charged by US prosecutors for *bribery* of an Indian official to obtain a mining license.

- **FACT**:

  --*The 2013 indictment of Mr. Firtash never charged Firtash with bribing anyone*. Yet if you Google the words "Firtash bribed Indian Officials," you will get over 4,700 hits – including throughout mainstream media.

  -- The Chicago prosecutors relied on a document that they sent to Austrian authorities. They called the document "very clear proof" of the Firtash group's bribery plan. But then four years later, the New York Times reported that the Chicago prosecutors had relied on a document *indisputably created by another entity – and unknown to*

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Firtash and his business colleagues. See December 31, 2018, New York Times story here. Yet the prosecutors have never owned up to their error.

--The Indian mine license allegedly subject to the Firtash "scheme" actually never happened. Moreover, Firtash has never been to the US, never done business in the US, has no business representative in the US. So why would US prosecutors indict him in the US? A good question. The Austrian Judge who denied the US's extradition request in 2015 – see New York Times report here – found that the US ordered Mr. Firtash's arrest in a communication from a US State Department official, not an official of the US Justice Department. He concluded from that the extradition request was "politically motivated." This required him to deny extradition under the terms of the Austrian – US extradition treaty. Guess who insisted on that "political motivation" provision of the US-Austria extradition treaty as a basis for denial of extradition? The U.S.

Myth: Firtash was involved with Rudy Giuliani (and Trump) in the effort to dig up dirt on Mr. Biden and his son.

- **FACT:** That is a total lie. Firtash and his two US attorneys, Dan Webb, former Chicago US Attorney, and myself categorically denied this lie. Mr. Firtash has *never once talked to Giuliani* or ever approved of anything Giuliani and Trump tried to do in spreading lies about Mr. Biden and his son. This despite thousands of times that US mainstream media has repeated the guilt-by-association innuendo that Mr. Firtash worked with Giuliani and Trump to dirty up the Bidens.

Myth: Firtash is financially connected to the Russian mob and a particular individual associated with the mob.

- **FACT**: A primary source of this lie originally came from a former Ukrainian Prime Minister, Julia Tymoshenko (soundly defeated when she competed against President Zelensky in the 2019 election, running an embarrassing, distant third in the first round of voting.) Tymoshenko was a competitor of

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Mr. Firtash in the natural gas business. (She was widely known in Ukraine and in western media as the "Gas Princess Gas").

In 2013, she spent substantial money to hire US PR and law firms to publicize her US RICO/racketeering case against Mr. Firtash and others in federal court in New York in 2013. It was there she alleged that Mr. Firtash was associated with the Russian mob. Less publicized – indeed almost entirely missed – was the fact that a highly respect US federal judge in the Southern District of New York, Judge Kimba Wood, in September 2015 threw out Tymoshenko's case *four times* – and the last one "with prejudice." This meant Judge Wood barred Tymoshenko from ever filing the case again. Of course the media, having publicized her bogus charges for years, virtually ignored Judge Wood's dismissal and prohibition against Tymoshenko filing again.

(One other source of Mr. Firtash's association with a Russian mobster came from a leaked cable from the then US Ambassador to Ukraine. They were based on notes taken after translation from Mr. Firtash's Russian into English and were never reviewed by Mr. Firtash for accuracy. Mr. Firtash strongly denied the accuracy of these notes, as reported in a leaked cable by the Ambassador.)

Myth: Certain officials in President Zelensky's government, without revealing any facts or evidence, imposed "sanctions" on Mr. Firtash allegedly for selling titanium to "Russian military enterprises."

- **FACT**: That charge is not only 100% false – but when Mr. Firtash and his American attorneys challenged the Ukrainian officials to produce any evidence, they were unwilling or unable to do so. Moreover, they refused to explain why they *failed to disclose* that a Ukraine government-owned company was and is still selling titanium raw materials to a Russian company that is the largest titanium producer in the world. See my op ed in the Kyiv Post.

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In sum:

Once the facts are examined and Mr. Firtash is vindicated as an innocent man, the positions Mr. Firtash stated in an op-Ed published in May 2014 -- that Ukraine must be democratic, independent, and strong -- should helpful to both Presidents Zelensky and Biden in supporting the same policies.

So should his consistent position in opposition to any form of corruption in Ukraine. (Despite the much-repeated charge, endlessly repeated in the media, that he is "corrupt," Mr. Firtash has never – not once – been convicted of any corrupt act in Ukraine -- or anywhere else). In March 2015, Firtash also helped create and fund a broad-based anti-corruption NGO called the "Agency for the Modernization of Ukraine" or "AMU" The IMU's leaders include the former prime minister of Poland, the founder of Doctors Without Borders and former French Minister of Foreign Affairs; and the former Director of Public Prosecutions of England and Wales.

It will take time for Mr. Firtash to be vindicated in the US courts. But facts and truth should count in the court of public opinion. The era of "alternative facts" and lies by Mr. Trump is thankfully over.

All Mr. Firtash – and his legal team here in the US – ask is that the media and the US public (and we hope the President Zelensky and President Biden) will respect the difference between facts and innuendo, truth and guilt-by-association.

# # # #

Mr. Davis is a founding partner in the Washington D.C. law firm, Davis Goldberg Galper. He served as Special Counsel to President Bill Clinton in 1996-98 and as a member of President George H. Bush's Privacy and Civil Liberties Oversight Board in 2006-07. He has been a columnist for The Hill newspaper and online and a media commentator and political analyst for the last two decades.

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Dmytro Firtash is innocent – and he can help improve Ukraine – U.S. relations

By Lanny J. Davis

United States President Joe Biden and Ukraine President Volodymyr Zelensky are meeting tomorrow, September 1, at the White House. The two share much in common – especially a commitment to democracy and better national relations.

Presidents Biden and Zelensky also share a record of standing up to bullying and lies by former President Donald Trump. And both leaders stand firmly against corruption, support the due process of law, and believe in the presumption of innocence.

That is why I am hoping both presidents will review and consider the facts and truth about Dmytro Firtash and not the widespread innuendo and false reporting about Mr. Firtash throughout U.S., European, and Ukrainian media in the last eight plus years. If they do, they will find Mr. Firtash is a supporter of their anti-corruption, pro-democracy agenda and supports good relations between our two countries. See Mr. Firtash's May 21, 2014 op-ed published in the Kyiv Post calling for an "independent and strong" Ukraine for more on this subject.

Below are some of the most egregious and false "myths" spread throughout the media – as if by sheer repetition lies can be made true – followed by my factual contradictions of those false reports.

Let me start with one that is false – and may understandably have given President Biden, whom I strongly admire and support, a negative (but misguided) impression of Mr. Firtash.

Myth: Firtash was involved with efforts by Rudy Giuliani (and former President Trump) to dig up dirt on President Biden and his son.

- **FACT:** That is false. Mr. Firtash and his two U.S. attorneys, Dan Webb, former Chicago U.S. Attorney, and myself have categorically denied this lie. Mr. Firtash has *never once spoken to Giuliani* or ever approved of anything Giuliani and former President Trump tried to do in spreading lies about Mr. Biden and his son.

  Nevertheless, U.S. mainstream and European media continue to repeat the guilt-by-association, utterly false innuendo that Mr. Firtash worked with Giuliani and former President Trump to dirty up President Biden and his son. I have repeatedly called reporters asking them to retract and correct this falsehood but have only had mixed success.

Myth: Firtash has been charged by U.S. prosecutors for the *bribery* of an Indian official to obtain a mining license.

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- **FACT**: *The 2013 indictment of Mr. Firtash does not charge him with bribing anyone*. Yet if you Google "Firtash and bribery," you will get thousands of results. This shows even mainstream reporters who repeat this falsehood haven't even read the indictment. They also don't report that the alleged "bribery scheme" never led to any titanium mining in India occurring. An unproven "scheme" ending up with … nothing is all that is alleged.

- **FACT**: The Chicago prosecutors made an error in saying a document they told the Austrians came from Mr. Firtash and his group was *"very clear proof"* of Mr. Firtash's guilt. As it turns out, the document was actually created by McKinsey & Company and was never seen by or known to Mr. Firtash and his group. This was confirmed on December 31, 2018 by the New York Times. Yet to date, to my knowledge the Chicago prosecutors have never disclosed their error to Austrian prosecutors or the media.

- **FACT**: Mr. Firtash has never been to the U.S., never done business in the U.S., and has no business representative in the U.S. So why would U.S. prosecutors indict Mr. Firtash in the U.S. when no bribes were even alleged within the nation of India and no mine ever happened? That mystery is still not solved. Nor has the media shown much interest in answering that question.

MYTH: The U.S. arrest and extradition request of Mr. Firtash involved no evidence of political motivation.

FACT: This is false. As reported in the New York Times here, there was substantial evidence at a full day public trial in Austria in April 2015 that the U.S. government (including the State Department) showed "political motivation" in the timing of the arrest and extradition request of Mr. Firtash. The Austrian judge noted that the State Department was involved in decisions first to ask Austrian authorities to arrest Mr. Firtash in November 2013, then a few days later to withdraw the arrest warrant, and then the following March 2014 to seek Mr. Firtash's arrest when he was in Vienna on vacation with his family. The timing of those arrest decisions, the court found, were all correlated with policy changes by the Ukrainian president at the time, who the U.S. believed was supported by Mr. Firtash. See the New York Times report on this evidence when the court announced his decision on April 30 rejecting the U.S. extradition request.

Note, perhaps ironically, that it has been the U.S. who insists under its extradition treaties on a finding of no "political motivation" before it will allow extradition of a foreign country citizen to that country.

MYTH: Political lobbying and "corruption" has delayed that extradition of Firtash to the U.S.

- **FACT**: That assertion is false. There has been no political lobbying by Mr. Firtash or his representatives. The extradition remains in the Austrian courts under review, and the

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original decision to deny the extradition of Mr. Firtash was made after a full day's public court hearing where all due process rules were followed, and both sides had the opportunity to present evidence. The judge then denied extradition in a written decision over 180 pages long. To ignore those facts and make a baseless accusation of corruption is not only regrettable, it is an insult to an Austrian democracy that follows the rule of law.

Myth: Firtash has had business connections to Russian organized crime and a particular individual allegedly associated with the mob.

- **FACT**: That much repeated charge is false. Mr. Firtash has not been involved in business with anyone associated in Russian organized crime nor ever "sought approval" for his gas or any other deals to do so, as has been falsely and repeatedly reported. He has repeatedly denied this lie publicly. See here for most recent categorical denial.

  A primary source of this lie came from the former Ukrainian Prime Minister Julia Tymoshenko. She was a competitor of Mr. Firtash in the natural gas business. Recently, she was soundly defeated by President Zelensky in Ukraine's 2019 election.

  In 2013, Tymoshenko hired U.S. public relations and law firms and spent substantial sums to widely publicize her RICO/racketeering case she filed in NYC federal court against Mr. Firtash and others. She received widespread media attention in return for her sizable investment. Included in her complaint were multiple allegations that Mr. Firtash was a mobster and involved with the Russian mob, which was then reported uncritically repeatedly by mainstream media. Those allegations were then and remain utterly false.

  In September 2015, a respected NYC U.S. District Court Judge not only threw out Tymoshenko's bogus complaints for the fourth time, she also wrote a written opinion concluding that Tymoshenko should be *barred* from ever filing the case again. See her written opinion here.

  Not surprisingly, in contrast to the media's widespread reporting of Tymoshenko's false charges about Mr. Firtash's mob connections, the dismissal of Tymoshenko's case *with prejudice for the fourth time* was barely reported by the same media that publicized her false and reckless charges.

  Two other sources of this false charge of Mr. Firtash's business association with Russian organized crime can be traced.

  First, there was a leaked cable sent by a U.S. Ambassador to Ukraine in 2010, based on notes taken after a personal meeting with Mr. Firtash. At that meeting, Mr. Firtash spoke in his only language, Russian, and the American notetaker relied on an English translator. Mr. Firtash has consistently and publicly denied the assertion that during

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that meeting he said he needed the "approval" of an alleged Russian mobster to complete a gas deal and insists it was a translation error.

Second, there was the unsupported allegation made by the U.S. government in court that Mr. Firtash was associated with Russian organized crime. That is not true, it is unfair that the government made such a claim (which it *did* not allege in its indictment because it cannot prove), and the media headlines it generated prove it.

Myth: Certain officials in President Zelensky's government recently announced – without revealing any facts or evidence – sanctions against Mr. Firtash for allegedly selling titanium to "Russian military enterprises."

- **FACT**: That charge was and is false and unsupported by any facts or evidence, and it received headlines throughout the media in the U.S., Europe, and Ukraine. The sanctions remain in place, harming Mr. Firtash economically, without an ounce of due process or facts to support them. When Mr. Firtash's attorneys publicly challenged these Ukrainian officials to produce any evidence, they were unwilling or unable to do so.

  Moreover, these Ukrainian officials failed to disclose that *a Ukraine government-owned companies was then and now selling titanium raw materials to a Russian company that is the largest titanium producer in the world*. This fact was also virtually ignored by the same media all over the Internet that publicized the Ukrainian government's utterly bogus sanctions of Mr. Firtash – still in place without a shred of evidence or due process. See my op-ed in the Kyiv Post, which deals with these false allegations in detail.

In sum, my message to President Zelensky and President Biden: Once the facts are examined and Mr. Firtash is vindicated as an innocent man, the positions he has publicly taken in support of democracy, independence, and close U.S.-Ukraine relations should be helpful to you both.

The pejorative term "oligarch," implying wealth achieved with corruption, is applied to Mr. Firtash across the media and is just another example of innuendo without facts. The frequent use of the term ignores Mr. Firtash's early history after the break-up of the Soviet Union when he and his family were impoverished, and he learned to survive through bartering goods in return for milk and food.

Moreover, as stated above, Mr. Firtash achieved his substantial business success over the years without ever being convicted of any corruption charge, in private business or government.

In 2015, Mr. Firtash's stand against corruption in Ukraine was demonstrated when he helped create and fund a broad-based anti-corruption NGO called the "Agency for the Modernization of Ukraine" or "AMU." The AMU's leaders include the former prime minister of Poland, the

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founder of Doctors Without Borders and former French Minister of Foreign Affairs, and the former Director of Public Prosecutions of England and Wales.

Yes, Mr. Firtash's vindication in the U.S. courts will take time.

But facts and truth should count in the court of public opinion. All Mr. Firtash – and his legal team here in the U.S. – ask is that the media and the U.S. public (and, we hope, Presidents Biden and Zelensky as well) take the time to review the *facts* for themselves. We hope all will resist the temptation to be influenced by repeated myths and false innuendo, no matter how many times they are repeated via Google, as surrogates for the truth.

The dystopian era of Donald Trump's lies and "alternative facts" should be over.

# # # #

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Dmytro Firtash is innocent – and he can help improve Ukraine – U.S. relations

By Lanny J. Davis

United States President Joe Biden and Ukraine President Volodymyr Zelensky are meeting today, September 1, at the White House. The two share much in common – especially a commitment to democracy and better national relations.

Presidents Biden and Zelensky also share a record of standing up to bullying and lies by former President Donald Trump. And both leaders stand firmly against corruption, support the due process of law, and believe in the presumption of innocence.

That is why I am hoping both presidents will review and consider the facts and truth about Dmytro Firtash and not the widespread innuendo and false reporting about Mr. Firtash throughout U.S., European, and Ukrainian media in the last eight plus years. If they do, they will find Mr. Firtash is a supporter of their anti-corruption, pro-democracy agenda and supports good relations between our two countries. See Mr. Firtash's May 21, 2014 op-ed published in the Kyiv Post calling for an "independent and strong" Ukraine for more on this subject.

Below are some of the most egregious and false "myths" spread throughout the media – as if by sheer repetition lies can be made true – followed by my factual contradictions of those false reports.

Let me start with the one that is false – and may understandably have given President Biden, whom I strongly admire and support, a negative (but misguided) impression of Mr. Firtash.

Myth: Firtash was involved with efforts by Rudy Giuliani (and former President Trump) to dig up dirt on President Biden and his son.

- **FACT:** That is false. Mr. Firtash and his two U.S. attorneys, Dan Webb, former Chicago U.S. Attorney, and myself have categorically denied this lie. Mr. Firtash has *never once spoken to Giuliani* or ever approved of anything Giuliani and former President Trump tried to do in spreading lies about Mr. Biden and his son.

  Nevertheless, U.S. mainstream and European media continue to repeat the guilt-by-association, utterly false innuendo that Mr. Firtash worked with Giuliani and former President Trump to dirty up President Biden and his son. I have repeatedly called reporters asking them to retract and correct this falsehood but have only had mixed success.

Myth: Firtash has been charged by U.S. prosecutors for the *bribery* of an Indian official to obtain a mining license.

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- **FACT**: *The 2013 indictment of Mr. Firtash does not charge him with bribing anyone*. Yet if you Google "Firtash and bribery," you will get thousands of results. This shows even mainstream reporters who repeat this falsehood haven't even read the indictment. They also don't report that the alleged "bribery scheme" never led to any titanium mining in India occurring. An unproven "scheme" ending up with … nothing is all that is alleged.

- **FACT**: The Chicago prosecutors made an error in saying a document they told the Austrians came from Mr. Firtash and his group was *"very clear proof"* of Mr. Firtash's guilt. As it turns out, the document was actually created by McKinsey & Company and was never seen by or known to Mr. Firtash and his group. This was confirmed on December 31, 2018 by the New York Times. Yet to date, to my knowledge the Chicago prosecutors have never disclosed their error to Austrian prosecutors or the media.

- **FACT**: Mr. Firtash has never been to the U.S., never done business in the U.S., and has no business representative in the U.S. So why would U.S. prosecutors indict Mr. Firtash in the U.S. when no bribes were even alleged within the nation of India and no mine ever happened? Moreover, while US prosecutors charged Mr. Firtash, Indian authorities reportedly investigated these same US allegations and never charged anyone in India with a crime, even a "scheme" to accept a bribe. Why Chicago prosecutors brought this indictment 8 years ago is still a mystery. Nor has US media shown much interest in addressing that question.

MYTH: The U.S. arrest and extradition request of Mr. Firtash involved no evidence of political motivation.

FACT: This is false. As reported in the New York Times here, there was substantial evidence at a full day public trial in Austria in April 2015 that the U.S. government (including the State Department) showed "political motivation" in the timing of the arrest and extradition request of Mr. Firtash. The Austrian judge noted that the State Department was involved in decisions first to ask Austrian authorities to arrest Mr. Firtash in November 2013, then a few days later to withdraw the arrest warrant, and then the following March 2014 to seek Mr. Firtash's arrest when he was in Vienna with his family. The timing of those arrest decisions, the court found, were all correlated with policy changes by the Ukrainian president at the time, who the U.S. believed was supported by Mr. Firtash. See the New York Times report on this evidence when the court announced his decision on April 30 rejecting the U.S. extradition request (later reversed on appeal on other legal grounds, but the extradition decision remains stayed pending further review by the trial court.)

Note, perhaps ironically, that it has been the U.S. who insists under its extradition treaties on a finding of no "political motivation" before it will allow extradition of a foreign country citizen to that country.

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MYTH: Political lobbying and "corruption" has delayed that extradition of Firtash to the U.S.

- **FACT**: That assertion is false. There has been no political lobbying by Mr. Firtash or his representatives. The extradition remains in the Austrian courts under review, and the original decision to deny the extradition of Mr. Firtash was made after a full day's public court hearing where all due process rules were followed, and both sides (with the Austrian government representing the U.S.'s view that extradition should be granted) had the opportunity to present evidence. The judge then denied extradition in a written decision over 180 pages long. To ignore those facts and make a baseless accusation of corruption is not only regrettable, it is an insult to an Austrian democracy that follows the rule of law.

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Yes, Mr. Firtash's vindication in the U.S. courts will take time.

But facts and truth should count in the court of public opinion. All Mr. Firtash – and his legal team here in the U.S. and in Austria – ask is that the media and the U.S. public (and, we hope, Presidents Biden and Zelensky as well) take the time to review the *facts* for themselves. We hope all will resist the temptation to be influenced by repeated myths and false innuendo, no matter how many times they are repeated via Google, as surrogates for the truth.

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September 3, 2021

To the editor of the Kyiv Post:

Re: Ms. Antoniuk's attack piece about me and Mr. Firtash, including my photo -- https://www.kyivpost.com/article/opinion/op-ed/daryna-antoniuk-ukraines-friend-foe-of-the-week-5.html
:

Ms. Atoniuk labeled me as a "foe" of Ukraine.

I challenge her to cite a single factual error in my column from my in RealClearDefense.com published on Thursday, September 3. See here. As the piece sets out, I state facts that contradict media myths based on innuendo, and no facts. Ms. Antoniuk's piece about me and my column proves my point – exactly.

In fact, she cannot cite a single fact I cited to support my statements as untrue. And she does not. Just innuendo.

For example, she refers to Mr. Firtash being "sanctioned." As widely reported, these sanctions were based on the false assertions by some Ukraine government security officials that Mr. Firtash has sold titanium products to a "Russian military enterprise." In fact, she fails to note Mr. Firtash and I put out an international press release denying that false charge and I challenged the Ukrainian officials to cite a single fact to support the charge that led to the "sanctions."

They did not and still have not.

Ms. Antoniuk also failed to note that it is a Ukraine government-owned company that is selling titanium products to a Russian monopoly company that is the largest producer of titanium in the world. Why did she ignore that? Or the fact, despite my public challenge, the Ukraine government officials still haven't explained their failure to disclose that fact at the press conference while making false charges against Mr. Firtash.

Another example of fact-free accusation is Ms. Antoniuk's citing a statement made by a former US Ambassador to Ukraine over 10 years ago associating Mr. Firtash with a business relationship with a Russian mobster. In my RealClearDefense piece, I pointed out that claim by the former US Ambassador was based on notes taken by someone in the room, based on a translation of Mr. Firtash's Russian into English. And Mr. Firtash categorically denied that claim. Ms. Antoniuk chose not to repeat my response, at least with a modicum of fairness.

Another sad example is Ms. Antoniuk actually citing a claim made by a US prosecutor without any facts or evidence that Mr. Firtash was a mobster. Does Mr. Antoniuk know the prosecutor offered no facts or evidence to support accusing someone of being a criminal? Does she know the standard of proof in the US under rules of due process to convict someone of a crime? Evidence produced in a transparent trial, with due process rules, leading to a conclusion "beyond a reasonable doubt."

Way below that standard is the evidence needed to obtain an "indictment" in the US – which is sometimes called "probable cause." The process is secret, allowing prosecutors to present one-sided

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evidence, unchallenged or with any counter-point facts, the accused unrepresented in the room. There are experienced criminal defense lawyers in the US who say that it is as easy for US a prosecutor to obtain an "indictment" of someone as it is to "indict a ham sandwich."

And even below that low level of evidence to obtain an indictment is when a prosecutor makes an accusation in open court without evidence – and did not even include that charge in an indictment.

Yet in her hit piece, Ms. Antoniuk gave credence to that fact-free prosecutorial charge .

Seriously? No one who understands due process should write such a statement and give it credence. Except perhaps a Kyiv Post journalist who can publish what she wishes, without fact-checking or any standards close to due process or fairness, in making a defamatory, baseless accusation against someone for being a mobster.

And so the only conclusion possible here is that Ms. Antoniuk labels me a "foe" of Ukraine because I spoke the truth – since she couldn't contradict with facts a single factual assertion I made in my RealClearDefense.com piece.

It follows that Ms. Antoniuk would label someone who lies a "friend" of Ukraine.

What am I missing? I ended my piece in RealClearDefense by expressing hope that the dystopian world of former President Trump, who called lies "alternative facts" and sold the Big Lie that he didn't' overwhelming lose last November's election – to himself and other conspiracy theorists but no one else.

I expressed the hope America can put those days behind us and get back to the truth and facts.

I was hoping that would occur among Ukrainian journalists too. Sorry to say, Ms. Antoniuk doesn't seem to have learned that lesson.

I am a supporter or a strong and independent and democratic Ukraine - as is my client, Dmitro Firtash. See his May 2014 op ed piece.

My record as a progressive Democrat who worked for both Presidents Bill Clinton and George W. Bush speaks for itself. See www.lannyjdavis.com.

Sincerely,

Lanny J. Davis
Attorney for Dmitry Firtash
+1-202-744-2792

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ATTACHMENT 3

From: Lanny J Davis ldavis@dggpllc.com
Sent: Saturday, September 4, 2021 8:59 AM
To: bonner@kyivpost.com
Cc: Olga Rudenko rudenko@kyivpost.com; Alex Lange alange@dggpllc.com; Lanny J Davis ldavis@dggpllc.com; Victoria Batts vbatts@dggpllc.com
Subject: FW: Daryna Antoniuk: Ukraine's Friend & Foe of the Week | KyivPost - Ukraine's Global Voice

Dear Mr. Bonner:

This is Lanny Davis. We have exchanged messages before about distortions and misleading reports published in the Post about my client, Dmytro Firtash.

Please see below.

I have not heard back from Olga Rudenko, which I am sure is a result of her receiving the letter to the editor so late last night Ukraine time. She has always been responsive.

But I am writing you directly, as editor in chief, because I asked Ms. Rudenko to immediately post my letter underneath the false and defamatory character attack on me and my client, Mr. Firtash.

I also said that in high level journalism, anyone who chooses to make personal attacks on someone else in a publication had better have his or her facts right. In this case, Ms. Antoniuk never called me, never asked for a response, misstated what I had written in a distorted and inaccurate fashion, and showed bias by ignoring facts she know are true. Please read my letter and you will see examples – on of the most egregious the factually unsupported lie that Mr. Firtash sold titanium products to a "Russian military enterprise" – or that he has associated with a Russian mobster, citing the lie repeated by others without any factual support (whjch is not fact-checking. As I have told my 16 year-old son, if you Google something and get a million hits, and it is false, a million hits does not make it true).

Please call me anytime today if Ms. Rudenko does not. I want this letter to the editor or response to be published online immediately. Defamation is serious. It is by definition false and harmful to reputation.

You and the Post have a good reputation as being responsible journalists who care about facts.

An opinion writer such as Ms. Daryniuk has her right her opinions. But reminiscent of Donald Trump, as I wrote, she does not have a right to her own facts – specifically, use innuendo and personal attacks as surrogates for facts under the pretext of an opinion piece.

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She does not protect herself by using the word "alleged." Put heinous crime after your name, of which you are 100% innocent, and no facts or evidence to support the crime, and then tell me if you would be satisfied with the word "alleged' in front of the charge.

Please call me today – I know it is weekend afternoon in Ukraine, but this is that important. If Rudenko is planning on publishing my response immediately – under the article Ms. Atoniuck wrote without fact-checking or calling me – then I ask that she respond to my email and do so immediately.
I need to know by Monday morning. Thank you Mr. Bonner. Sorry for interrupting your weekend. Feel free to call me anytime.

Sincerely,

Lanny Davis
+1-202-744-2782

See attached Word Doc. My Letter that I ask to be immediately published under Ms. Antoniuk's hit piece. And cut and pasted below.

# # #

Dear Olga –

I submit below a letter to the editor rebutting this personal attack lacking any facts by your writer, Daryna Antoniuk, in today's Kyiv Post. https://www.kyivpost.com/article/opinion/op-ed/daryna-antoniuk-ukraines-friend-foe-of-the-week-5.html

In any democratic society that has a free press, when someone makes a personal attack or a false defamatory statement about another, there should be an automatic right to reply. So I ask you immediately to post my letter to the Editor under this article by Daryna Antoniuk.

I regard this piece as containing clearly defamatory accusations without a single fact provided to support her labels, a classic example of what Joseph McCarthy used to do to defame innocent Americans in the early 1950s with labels and brands, such as "pinkos and Communists," without revealing specific facts constituting evidence.

I ask you to publish my letter to the editor immediately underneath her hit piece about me and my client immediately or asap. Thank you. In fairness – I have been attacked personally. I should get a chance to rebut immediately, in real time.

Please call me over the weekend when you have a minute. I take this very seriously. You can certainly encourage Ms. Antoniuk to call me to discuss her piece. Perhaps she will be convinced she got it wrong or omitted facts that contradict her innuendo.

See my submission below. Thanks for our prompt publication on line underneath her piece.

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Regards,

Lanny Davis
+1-202-744-2791

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THIS IS THE LTE I AM ASKING BE IMMEDIATELY PUBLISHED UNDER THE ANTONIUK PIECE

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September 3, 2021

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I was hoping that would occur among Ukrainian journalists too. Sorry to say, Ms. Antoniuk doesn't seem to have learned that lesson.

I am a supporter or a strong and independent and democratic Ukraine - as is my client, Dmitro Firtash. See his May 2014 op ed piece.

My record as a progressive Democrat who worked for both Presidents Bill Clinton and George W. Bush speaks for itself. See www.lannyjdavis.com.

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Sincerely,

Lanny J. Davis
Attorney for Dmitry Firtash
+1-202-744-2792

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ATTACHMENT 2

Daryna Antoniuk: Ukraine's Friend & Foe of the Week
By Daryna Antoniuk.

Editor's Note: This feature separates Ukraine's friends from its enemies. The Order of Yaroslav the Wise has been given since 1995 for distinguished service to the nation. It is named after the Kyivan Rus leader from 1019-1054, when the medieval empire reached its zenith. The Order of Lenin was the highest decoration bestowed by the Soviet Union, whose demise Russian President Vladimir Putin mourns. It is named after Vladimir Lenin, whose corpse still rots on the Kremlin's Red Square, more than 100 years after the October Revolution he led.

Friend — Marta Farion, president of the Kyiv-Mohyla Foundation of America

Marta Farion is a long-time advocate of education reform in Ukraine. A high-quality education, according to her, is essential to boost innovations and ramp up Ukraine's economic growth. As of today, Ukraine's 140 universities — remnants of the Soviet legacy — lack funding and prestige, so many local students seek better opportunities abroad. Farion set a goal to change that.

In the U.S., she spearheads the Kyiv-Mohyla Foundation, a non-profit organization founded in 2002 to support the National University of Kyiv-Mohyla Academy, one of Ukraine's most prominent universities. Farion helped the university to raise investment, fund student scholarships and organize exchange programs. She also co-founded the Electronic Library of Ukraine, a project that provides access to digital academic and research papers to Ukraine's universities.

Farion has a broad vision of what must be done to make Ukraine's universities internationally competitive. First, Ukraine needs a better law on higher education, which has been at the center of disputes between politicians in every government since Ukraine's independence, she said.

Ukrainian universities also have to fight corruption: "It degrades the quality of education and certification of degrees," Farion said. According to her, Ukraine's universities suffer from abuses related to admissions, bribery, plagiarism, use of ghostwriting, and inadequate assessment of student achievements.

Many things have been done to improve Ukraine's education, Farion said, but local reformers should continue moving forward. "A policy to revamp the educational system will be the basis for Ukraine's renewal. It will drive competitiveness, create economic opportunities, and have a direct impact on slowing the exodus of young people abroad," she said.

During his visit to Washington on Sept. 1, President Volodymyr Zelensky awarded Farion the Order of Prince Yaroslav the Wise. For her service to the nation, Farion is Ukraine's friend of the week.

Foe ["Enemy"] — Lanny Davis, attorney for Ukrainian oligarch Dmytro Firtash

Throughout his career as a lobbyist and lawyer, Lanny J. Davis has built an impressive client list. He once helped defend President Bill Clinton from impeachment and represented the interests

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of Donald Trump's personal lawyer Michael Cohen. Now he is part of a legal team representing Ukraine's exiled oligarch Dmytro Firtash.

Firtash, sanctioned by Ukraine on July 18 for allegedly selling titanium that went to Russia's defense industry, is fighting extradition to the U.S. on a 2014 criminal indictment alleging involvement in a bribery scheme.

In a Sept. 1, 2021, op-ed for Real Clear Defense, Davis denied all Firtash wrongdoing, including the current U.S. federal indictment for which Firtash has evaded extradition from Austria for seven years. He denied Firtash had any association with Russian mobster Semion Mogilevich, despite ex-U.S. Ambassador to Ukraine William B. Taylor's assertion that Firtash confessed to those links, according to WikiLeaks documents made public in 2010. Davis also denied the U.S. Justice Department characterization of Firtash as an "upper-echelon" associate of Russian organized crime.

It was one denial after another in the op-ed, despite evidence to the contrary. It was almost as if Firtash was a victimized choir boy rather than a shady, Kremlin-connected businessman whose companies, according to state officials, currently have a debt of hundreds of millions of dollars for unpaid natural gas supplies.

Everyone is entitled to their opinion and every accused person is entitled to the best lawyers they can afford. Davis is an aggressive advocate for his client, as the Kyiv Post knows from experience. But his portrayal of Firtash as an "anti-corruption" democrat who stands for "a strong and independent Ukraine" is just so ridiculous, and so at odds with Firtash's record, that Davis is Ukraine's foe of the week.

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NYTS Q'S AND A'S – TUESDAY SEPT 7, 2021

Answers to your recent set of questions from last week:

On the record – as identified under each quote

Call me for further clarification if you need any.

1. Please clarify whether the letter from counsel for Ms. Toensing regarding Dan Webb conducting a privilege review is inaccurate, or in need of additional context. Thanks again.

Dan Webb, former Chicago US Attorney, defense attorney for Mr. Firtash in the Chicago case, is taking all necessary and appropriate steps to protect Mr. Firtash's privileged information (some of which Ms. Toensing had as one of his former attorneys). Mr. Firtash has and had nothing to do with Ms. Toensing's activities outside of his US case.

2) We intend to refer to the charges against Mr. Firtash as "bribery conspiracy" or "conspiracy to commit bribery" charges. Please confirm that this is correct.

Yes that is correct – but to be <u>complete</u> as well as accurate. Therefore, I request that you add a few words:

"Firtash was charged with a conspiracy to commit bribery in India to obtain a license for a mine that in India that never happened."

3) Regarding your on-the-record statement that Mr. Firtash "was not involved in any way with Giuliani and his possible political agenda," we asked that you restate your comment to more specifically address what Mr. Firtash did not do with Mr. Giuliani. Keeping in mind that Mr. Giuliani sometimes traveled on Mr. Firtash's dime, met with Mr. Dietrich and Mr. Gorbunenko and knew that Mr. Parnas and his other associates were meeting with Mr. Firtash, the phrase "involved in any way" seemed imprecise and possibly inaccurate. Please send us whatever statement you'd like us to use about this important point.

Please use this quote instead:

"Mr. Firtash never talked to or met with Mr. Giuliani at any time – ever. He never knew about, approved of, or paid for any activities on his behalf by Mr. Giuliani, including any effort to dig up dirt on President Biden and his son. Any suggestion to the contrary, through innuendo or guilt-by-association, is false and defamatory."

--Dan Webb and Lanny J. Davis, attorneys for Mr. Firtash

4) Regarding Mr. Isenegger, as referenced in or original fact check document (point #16) we still intend

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to report that he paid $84,545 to Mr. Parnas's travel agent for expenses that included roughly $20,000 associated with an August 2019 trip to Spain taken by Mr. Giuliani, his girlfriend and his bodyguard. The expenses included first-class plane tickets and a VIP car service. The travel agent sent Mr. Isenegger and Mr. Firtash's assistant a bill for these expenses. The bill referred to Mr. Giuliani as "MG," for Mayor Giuliani, and his group as "MG TEAM." Mr. Firtash's assistant helped Mr. Isenegger coordinate the payment.

"Mr. Firtash had no knowledge of any payments of travel expenses or any other expenses for the benefit of Mr. Giuliani. He had no knowledge of a check allegedly paid by Mr. Isenegger to Mr. Parnas's travel agent. Mr. Firtash has come to learn that his assistant helped Mr. Isenegger make this payment to Mr. Parnas's travel agent as a courtesy to Mr. Isenegger, whom she knew.

"Mr. Firtash knew he was paying Mr. Parnas for his assistance to Ms. Toensing and Mr. diGenova regarding their work on the US case. This was required under his retention agreement with them, which also required he pay for Mr. Parnas's reasonable business expenses. But Mr. Firtash did not review any requests by Mr. Parnas for reimbursement of his expenses."

--Lanny J. Davis, attorney for Mr. Firtash

5) Please let us know if you have any comment or additional context on the above

Ben and Willie: I would appreciate your using this as what I call the "linchpin" quote and, if I ay respectfully request you and your editors, that you use this quote high up in the story – I hope on page one before the flip. Thank you for your consideration.

"I hope, once and for all, that the false reporting over many months by mainstream media in the US and Europe, using innuendo as a surrogate for facts – i.e., that Mr. Firtash ever approved or paid for any effort by Mr. Giuliani or anyone else to dig up dirt on Mr. Biden and his son -- is finally put to rest. If anyone associated with Mr. Firtash was involved in any such efforts, they were acting without Mr. Firtash's knowledge and contrary to his beliefs and interests.

"When Mr. Firtash learned through the media that confidential legal documents from his Austrian legal team were 'leaked' to a journalist and to Mr. Giuliani without his knowledge or permission, which in part referred to this negative effort against Mr. Biden, he was furious."

--Lanny J. Davis, attorney for Mr. Firtash

6) Please let us know if it is accurate to report the following in the article: Mr. Davis stated that Mr. Firtash did not reimburse Mr. Isenegger for the $84,545, but could not explain why Mr. Isenegger would have paid the expenses out of his own pocket.

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Mr. Davis stated that Mr. Firtash did not reimburse Mr. Isenegger for the $84,545 check he allegedly paid to Mr. Parnas's travel agent. He does not know why Mr. Isenegger paid the expenses for Mr. Parnas.

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Overall Timeline

Personal Background

- **1965**: Firtash was born in the western Ukrainian village of Sinkov, formerly Bogdanovka, Zaleshchitsky District, Ternopil Oblast, Ukrainian SSR.
  - The small Soviet village was approximately 650 kilometers from Kiev, and it was comprised of approximately 3,000 people living in 1,000 houses. The villagers grew tomatoes, which was the local agricultural product.
  - Firtash's father was a truck driver and then a driving instructor. His mother was a zoologist in local farming and then qualified as a bookkeeper at a local sugar factory
- **1982**: Firtash finished school in the village and left at age 17. He went to a vocational railway college specializing in train driving in eastern Ukraine for 2 ½ years.
- **1984**: Firtash got the job of train driver assistant, and soon he was conscripted into the army.
  - Firtash spent 2 years in the army before returning to work as the train driver assistant.
- **1986**: Firtash got married to a girl from his village and had a daughter.
  - He moved with his family to Chernivtsi, a regional center in Ukraine, where he got a job as a firefighter, and he worked there for 2 years.

Business Beginnings

- **1988**: The Soviet Union began to collapse and stopped paying salaries regularly to employees of the state-owned companies. So Firtash had to start looking for private entrepreneurial work.
- **1989**: Firtash left Chernivtsi for Moscow to start his own private trading/brokering business where he would barter products from one company and sell it to another.
  - The first major deal Firtash brokered was the sale of powdered milk from a factory in Ukraine to the Uzbekistan government (who traded cotton to pay for the milk).
  - His private trading business grew after that.
  - Firtash then brokered a deal with the government of Turkmenistan whereby he helped Turkmenistan to get food and other industrial products from Ukraine and received natural gas as a payment as Turkmenistan did not have foreign exchange to pay.
  - Firtash sold the gas purchased to Ukraine, which is how he got his start in the natural gas business.
- **2000/2001**: Firtash expended his gas trading business to Europe where he was able to make large profits on sales of natural gas to European countries.
- **2004**: Firtash's company entered into a joint venture with Gazprom, the Russian state-owned gas monopoly.

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- ◊ As a result of the joint venture, Gazprom received access to Central Asian gas, access to the Ukrainian industrial market which had been supplied by Firtash's company, and access to underground storage facilities in Ukraine which would assist Gazprom in supplying gas to Europe. Firtash's company received long-term contracts to transit his gas from Central Asia to Ukraine and Europe through Gazprom's pipes in Russia through 2027. There was a strong mutual interest in that deal.
- ◊ As another very important result of forming the joint venture between Gazprom and Firtash's company, Ukraine received from Gazprom a fixed price for gas for households till 2027. That agreement was later broken by Julia Timoshenko, and the price for gas for households more than doubled.

Investigation, Arrest, & Extradition

- **March 2006**: Firtash and others from Group DF meet with Andhra Pradesh Chief Minister YSR Reddy and other Indian officials to discuss a potential mining project, eventually signing a Memorandum of Understanding related to the project.
- **2008**: U.S. law enforcement begins investigating Firtash because of alleged ties to Russian organized crime figure Semion Mogilevich.
- **December 8, 2008**: Firtash meets with U.S. Ambassador to Ukraine, William Taylor.
  - ◊ Taylor, with the assistance of a translator, takes notes during the meeting, in which he claims that Firtash "acknowledged ties to Russian organized crime figure [Semion] Mogilevich, stating he needed Mogilevich's approval to get into business in the first place."
  - ◊ Taylor sends the notes back to the U.S. State Department, which were leaked in 2010 by WikiLeaks.
  - ◊ Firtash has since stated publicly multiple times that he had never said that he was connected to Mogilevich to Ambassador Taylor or anybody else, and that the information in the cable was false.

- **January 2009**: Tymoshenko brokered a new gas purchase deal with Gazprom (cutting out Firtash and his company) in which Ukraine paid more than double the price for natural gas that it was paying through Firtash's joint venture with Gazprom.
- **February 14, 2010**: Viktor Yanukovych is elected President of Ukraine over Julia Tymoshenko, the preferred candidate of the U.S. government.
- **December 2011**: Julia Tymoshenko filed a civil RICO case against Firtash and others in U.S. District Court for the Southern District of New York claiming they were part of a money-laundering scheme. Tymoshenko would try to file the same case three more times after this before the court barred her from further filings.
- **June 20, 2013**: Firtash and his co-defendants are indicted under seal in federal court in Chicago for a series of charges including a conspiracy to commit bribery and others.
- **July 3, 2013**: An arrest warrant is first issued for Firtash.
- **July/August 2013**: Russia begins threatening Ukraine ahead of Ukraine signing the EU Association Agreement, which could have led to Ukraine's entry into the

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European Union.[1] Yanukovych begins to waver on whether he will sign the Association Agreement.

- **October 30, 2013**: The U.S. State Department announced Assistant Secretary of State Victoria Nuland would travel to Kiev to meet with President Yanukovych and discuss the EU Association Agreement, and U.S. authorities issued a provisional arrest request for Firtash to Austrian authorities.
- **November 4, 2013**: After Yanukovych's meetings with Assistant Secretary Nuland, all arrest requests for Firtash are withdrawn.
    - ◊ When U.S. prosecutors were asked by the Austrian court why the arrest requests were withdrawn at this time, their response was simply that withdrawing the requests were part of "the greater strategy."
- **November 21, 2013**: Yanukovych announces he would not sign EU Association Agreement, triggering protests in Ukraine.[2]
- **February 21, 2014**: Following months of protest in what would become known as the Euromaidan Revolution, Yanukovych flees Ukraine.
- **February 26, 2014**: The extradition request for Firtash was renewed after Firtash publicly supported political candidate Vitali Klitschko, who was not a U.S.-favored politician.[3]

March 12, 2014: Firtash is in Vienna and is arrested and detained by Austrian authorities pursuant to the extradition request. Firtash is put in an Austrian jail alongside hardened criminals. The bail demanded was $170 million – an unprecedented amount for a non-violent criminal.

- ◊ Firtash obtains the $170 million needed to post bail from Vasily Anisimov and causes that amount to be transferred to BAWAG, intended to be transferred to the court account to allow Firtash to be released on bail. BAWAG files a money laundering suspicion notice with the Austrian FIU; the sum transferred is cleared by the Austrian FIU on Friday, Mar 21, 2014 at appr 4 pm and DF is released.

- **March 21, 2014**: Firtash is released from detention after an inexplicable delay. The terms of bail are that he is free to travel within Austria but cannot leave the country.
- **April 1, 2014**: The U.S. Department of Justice requests extradition of Firtash from Austria to the United States.
- **April 2, 2014**: The indictment against Firtash and others is unsealed by U.S. DOJ.
- **April 30, 2015**: The Austrian Regional Criminal Court in Vienna denies the U.S. request for extradition of Firtash, finding the request to be at least in part politically motivated.
    - ◊ Article 4(3) of the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Austria provides

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[1] Radio Free Europe: Moscow's Latest War On Good Taste: No To Ukrainian Chocolate
The Guardian: Ukraine's EU trade deal will be catastrophic, says Russia

[2] BBC: Ukraine protests after Yanukovych EU deal rejection

[3] See leaked 2014 conversation between Victoria Nuland and U.S. Ambassador to Ukraine, Geoffrey Pyatt, where Nuland says: "I don't think Klitsch should go into the government. I don't think it's necessary, I don't think it's a good idea." https://www.bbc.com/news/world-europe-26079957

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that extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.[4]

- **September 18, 2015**: The U.S. District Court in the Southern District of New York dismissed Tymoshenko's third RICO complaint against Firtash, denied her request to file a fourth RICO complaint, and barred her from filing the case ever again.
- **February 21, 2017**: The Austrian Upper State appeals court overturns the Austrian Regional Criminal Court's decision and approves Firtash's extradition to the U.S., making no determination about guilt or innocence. Firtash appeals the decision to the Austrian Supreme Court of Justice.
- **February 21, 2017**: On the same day, a Spanish prosecutor issues an arrest warrant and Firtash is detained in Vienna. Subsequently the arrest warrant is found lacking by Spanish courts in the absence of any facts presented by Spanish prosecutor of the charges used to arrest him.
- **December 12, 2017**: The Austrian Supreme Court grants Firtash a stay of U.S. authorities' requested extradition until a preliminary ruling is reached by the EU Court of Justice on the applicability of the EU Charter on Human Rights to Firtash's extradition appeal.
- **December 19, 2017**: The Austrian Court of Appeals rejects a related request by Spain to extradite Firtash based on the U.S. allegations.
- **December 21, 2017**: A coalition of 23 human rights groups recalls and withdraws a petition to the U.S. State Department asking the United States to sanction Firtash under the "Magnitksy Act" after these groups are unable to substantiate false charges contained in its petition regarding Firtash.
- **June 25, 2019**: Austria's Supreme Court ruled that Firtash could be extradited to the U.S.
- **June 25, 2019**: Firtash submits a motion to re-open the case to consider new evidence of political motivation. A Vienna trial court halts Firtash's extradition in order to review the new evidence.
- **Late June 2019**: Firtash meets with Lev Parnas for the first time.
- **July 2019**: On an unknown date, Lev Parnas takes handwritten notes while on a call with Rudy Giuliani that included an objective of getting President Zelensky to announce an investigation into Joe Biden.
- **Mid July, 2019**: Firtash retained attorneys Joseph diGenova and Victoria Toensing, who scheduled a meeting with U.S. Attorney General William Barr to discuss Firtash's criminal case.
- **August 26, 2019**: DiGenova and Toensing met with A.G. Barr to discuss the case but are told they have to deal with the local U.S. Attorneys in Chicago.
- **September 4, 2019**: Former Ukraine General Prosecutor Viktor Shokin signs an affidavit for Firtash's lawyers saying that the U.S. government took steps to prevent Firtash's return to the Ukraine.
    - In the affidavit, Shokin stated that Firtash was threatened with arrest (at the request of U.S. authorities) if he returned to give a speech to the Ukrainian Federation of Employers . Firtash had been considering going back to

[4] https://www.congress.gov/treaty-document/105th-congress/50/document-text

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Ukraine to give the speech on December 2, 2015 as he had the right to travel after the decision of the Austrian Regional Criminal Court from April 30, 2015 that denied the US request for extradition. But changed his plans as the Ukrainian authorities closed the sky for private flights. Also, there were law enforcement officers waiting to arrest him at the Ukraine airport.

- ◊ Shokin points to this incident as evidence that the U.S. government was manipulating Ukrainian politics under false pretexts.

- ♦ **September 26, 2019**: *The Hill* columnist John Solomon published the leaked Shokin affidavit in a story alleging Joe Biden's involvement in getting Shokin removed from his post was to protect his son Hunter Biden. Firtash never authorized this breach of attorney confidentiality to Solomon.
- ♦ **January 31, 2021**: Toensing and diGenova's representation of Firtash ends.

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November 30, 2021

Dear William and Ben:

Here are my on record answers as Lanny Davis, attorney for Dmytro Firtash, to the four questions you asked in your email, highlighted in your email below and copied immediately below with my four answers:

From our last paragraph – four questions:

"Can you please clarify:

"A) Whether you dispute Mr. Isenegger's statement;"

We cannot dispute Mr. Isenegger's statement nor can we confirm it – Mr. Firtash and his company had no knowledge regarding this wire transfer.

"B) Whether his statement is technically correct because Mr. Firtash or someone affiliated with Group DF reimbursed Mr. Isenegger or otherwise funded the $84,545 wire transfer to the travel agent;"

See answer to number (A).

"C) Whether it was Ms. Strasser or another Group DF employee who handled payment to the travel agent for Mr. Giuliani's trip to Madrid;"

See answer to (A) – the answer is, no re. the administrative assistant or anyone else "handling" any such payment to the travel agent for any purpose

"D) Whether you are aware of anyone else who reimbursed Mr. Isenegger."

No.

# # #

From: William Rashbaum <rashbaum@nytimes.com>
Sent: Wednesday, November 24, 2021 2:37 PM
To: Lanny J Davis <ldavis@dggpllc.com>; Protess, Benjamin <benjamin.protess@nytimes.com>
Subject: Ralph Isenegger Follow-Up Questions

Hi Lanny,

Thank you again for talking just now. As we mentioned, Mr. Isenegger is stating on the record that he did not ever pay for Mr. Giuliani's travel.

DF: He has no idea and cannot dispute Mr. Isenegger's statement. This payment has nothing to do with DF We cannot dispute or comment on Mr. Isenegger's statement. except to say Mr. Firtash is unaware of this issue.

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We noted to Mr. Isenegger that we have seen a copy of the $84,545 wire transfer he sent to Mr. Parnas' travel agent, as well as a copy of an invoice prepared by the travel agent and was addressed to Mr. Isenegger that specifically listed roughly $30,000 in expenses for Mr. Giuliani's August 2019 trip to Madrid, among travel expenses for Mr. Parnas and others. The invoice was also addressed and sent to Ms. Strasser and listed her email address and cell phone number.

When we followed-up with Mr. Isenegger and asked him to clarify his statement in light of the wire transfer and the invoice, he simply reiterated his statement that he did not ever pay for Mr. Giuliani's travel.

Can you please clarify: A) Whether you dispute Mr. Isenegger's statement; B) Whether his statement is technically correct because Mr. Firtash or someone affiliated with Group DF reimbursed Mr. Isenegger or otherwise funded the $84,545 wire transfer to the travel agent; C) Whether it was Ms. Strasser or another Group DF employee who handled payment to the travel agent for Mr. Giuliani's trip to Madrid; D) Whether you are aware of anyone else who reimbursed Mr. Isenegger.

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December 1, 2021

Boris – see my responses IN ALL CAPS another follow-up email – dated yesterday morning, 11-30 -- to my responses to (A), (B), (C), and (D) questions in their 11-29 email.

From: Benjamin Protess benjamin.protess@nytimes.com
Sent: Tuesday, November 30, 2021 11:36 AM
To: Lanny J Davis ldavis@dggpllc.com
Subject: Re: Answers to your latest questions

Hi Lanny,

Thanks for your response. We appreciate your patience as we work to ensure that the story is both accurate and fair.

We're confused by your answer to B, which raises some additional questions; we believe clarifying these issuers will serve both your client and our readers.

(1) You have previously stated on the record that Mr. Firtash did not reimburse Mr. Isenegger for this $84,545 wire transfer and that you do not know why Mr. Isenegger would pay this money out of his own pocket. Would it also be accurate to say -- and attribute to you -- that no one at or affiliated with Group DF reimbursed Mr. Isenegger for this wire transfer?

YES.

(2) Your response highlights the question of why Mr. Isenegger was involved at all in the payments to Mr. Parnas's travel agent. As previously discussed, it was Group DF that initially paid the travel agent for various expenses, including Mr. Giuliani's stay at the Ritz London in June 2019 and his private jet flight from Santo Domingo to Washington in July 2019. (Our article will make clear that Mr. Firtash says he had no idea that the funds covered Mr. Giuliani's expenses). Then, in September 2019, the travel agent started directing the invoices to the Isenegger International Advisory Group, while still sending them to Ms. Strasser, with her email and cellular telephone number listed at the top. Why did Mr. Isenegger suddenly take over payment for these expenses while Ms. Strasser continued to receive the invoices?

(2) SEE PRIOR RESPONSE: THE ADMINISTRATIVE ASSISTANT FORWARD THE INVOICES TO MR.ISENEGGER AND HIS COMPANY TO HIM AS A COURTESY. THIS IS MR. ISENEGGER'S BUSINESS AND WE DON'T KNOW ABOUT IT.

OFF THE RECORD:

I WON'T T SPECULATE ON WHAT IS IN MR. ISENEGGER'S MIND OR IS NOT IN HIS MIND.

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(3) Did Ms. Strasser send Mr. Isenegger the travel agent's invoice that listed Mr. Giuliani's Madrid trip among the other expenses, or did she only tell Mr. Isenegger the total amount owed?

SEE ANSWER TO (2).

OFF THE RECORD:

--HAVE YOU CONFIRMED WHAT WAS CONTAINED IN THE INVOICE THAT WAS ADDRESSED TO ISENEGGER AND FORWARDED BY THE ADMINISTRATIVE ASSISTANT, I.E., "LISTING" THE GIUILIANI-MADRID EXPENSS?

--ALSO, SHE DID NOT "TELL" ISENEGGER ANYTHING. SHE FORWARDED THE INVOICES.

At the end of the day, we simply need to reconcile your statement with the one provided to us by Mr. Isenegger, who also represents your client. On the one hand, you have stated that Mr. Firtash/Group DF did not pay for Mr. Giuliani's Madrid trip. And on the other hand, Mr. Isenegger has denied that he paid for Mr. Giuliani's Madrid trip. If we include both statements in the story, without any additional context or clarification, we're doing a disservice to both our readers and your client.

Please let us know.

Thanks again,
Ben & Willy

From: Benjamin Protess <benjamin.protess@nytimes.com>
Sent: Tuesday, November 30, 2021 11:36 AM
To: Lanny J Davis <ldavis@dggpllc.com>
Subject: Re: Answers to your latest questions

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(1) You have previously stated on the record that Mr. Firtash did not reimburse Mr. Isenegger for this $84,545 wire transfer and that you do not know why Mr. Isenegger would pay this money out of his own pocket. Would it also be accurate to say -- and attribute to you -- that no one at or affiliated with Group DF reimbursed Mr. Isenegger for this wire transfer?

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(2) Your response highlights the question of why Mr. Isenegger was involved at all in the payments to Mr. Parnas's travel agent. As previously discussed, it was Group DF that initially paid the travel agent for various expenses, including Mr. Giuliani's stay at the Ritz London in June 2019 and his private jet flight from Santo Domingo to Washington in July 2019. (Our article will make clear that Mr. Firtash says he had no idea that the funds covered Mr. Giuliani's expenses). Then, in September 2019, the travel agent started directing the invoices to the Isenegger International Advisory Group, while still sending them to Ms. Strasser, with her email and cellular telephone number listed at the top. Why did Mr. Isenegger suddenly take over payment for these expenses while Ms. Strasser continued to receive the invoices?

(3) Did Ms. Strasser send Mr. Isenegger the travel agent's invoice that listed Mr. Giuliani's Madrid trip among the other expenses, or did she only tell Mr. Isenegger the total amount owed?

At the end of the day, we simply need to reconcile your statement with the one provided to us by Mr. Isenegger, who also represents your client. On the one hand, you have stated that Mr. Firtash/Group DF did not pay for Mr. Giuliani's Madrid trip. And on the other hand, Mr. Isenegger has denied that he paid for Mr. Giuliani's Madrid trip. If we include both statements in the story, without any additional context or clarification, we're doing a disservice to both our readers and your client.

Please let us know.

Thanks again,
Ben & Willy

On Tue, Nov 30, 2021 at 8:54 AM Lanny J Davis <ldavis@dggpllc.com> wrote:

Dear Ben and William:

I have reprinted your email below and answered the four questions within the questions you asked:

See attached Word doc and cut and pasted below for your convenience.

I truly hope you are done and ready to publish. It has been a long time and we have, to say the least, done our best to answer all your questions.

Regards,

Lanny

# # #

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November 30, 2021

Dear William and Ben:

Here are my on record answers as Lanny Davis, attorney for Dmytro Firtash, to the four questions you asked in your email, highlighted in your email below and copied immediately below with my four answers:

From our last paragraph – four questions:

"Can you please clarify:

"A) Whether you dispute Mr. Isenegger's statement;"

We cannot dispute Mr. Isenegger's statement nor can we confirm it – Mr. Firtash and his company had no knowledge regarding this wire transfer.

"B) Whether his statement is technically correct because Mr. Firtash or someone affiliated with Group DF reimbursed Mr. Isenegger or otherwise funded the $84,545 wire transfer to the travel agent;"

See answer to number (A).

"C) Whether it was Ms. Strasser or another Group DF employee who handled payment to the travel agent for Mr. Giuliani's trip to Madrid;"

See answer to (A) – the answer is, no re. the administrative assistant or anyone else "handling" any such payment to the travel agent for any purpose

"D) Whether you are aware of anyone else who reimbursed Mr. Isenegger."

No.

# # #

From: William Rashbaum <rashbaum@nytimes.com>
Sent: Wednesday, November 24, 2021 2:37 PM
To: Lanny J Davis <ldavis@dggpllc.com>; Protess, Benjamin <benjamin.protess@nytimes.com>
Subject: Ralph Isenegger Follow-Up Questions

Hi Lanny,

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Thank you again for talking just now. As we mentioned, Mr. Isenegger is stating on the record that he did not ever pay for Mr. Giuliani's travel.

DF: He has no idea and cannot dispute Mr. Isenegger's statement. This payment has nothing to do with DF We cannot dispute or comment on Mr. Isenegger's statement. except to say Mr. Firtash is unaware of this issue.

We noted to Mr. Isenegger that we have seen a copy of the $84,545 wire transfer he sent to Mr. Parnas' travel agent, as well as a copy of an invoice prepared by the travel agent and was addressed to Mr. Isenegger that specifically listed roughly $30,000 in expenses for Mr. Giuliani's August 2019 trip to Madrid, among travel expenses for Mr. Parnas and others. The invoice was also addressed and sent to Ms. Strasser and listed her email address and cell phone number.

When we followed-up with Mr. Isenegger and asked him to clarify his statement in light of the wire transfer and the invoice, he simply reiterated his statement that he did not ever pay for Mr. Giuliani's travel.

Can you please clarify: A) Whether you dispute Mr. Isenegger's statement; B) Whether his statement is technically correct because Mr. Firtash or someone affiliated with Group DF reimbursed Mr. Isenegger or otherwise funded the $84,545 wire transfer to the travel agent; C) Whether it was Ms. Strasser or another Group DF employee who handled payment to the travel agent for Mr. Giuliani's trip to Madrid; D) Whether you are aware of anyone else who reimbursed Mr. Isenegger.

William K. Rashbaum

Senior Writer
The New York Times

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Ben Protess
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DISSEMINATED BY DAVIS, GOLDBERG & GALPER PLLC, A REGISTERED FOREIGN AGENT, ON BEHALF OF DMITRY FIRTASH. MORE INFORMATION IS ON FILE WITH THE DEPT OF JUSTICE, WASHINGTON DC.

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THIS DOCUMENT IS ENTIRELY OFF THE RECORD – 12-8-21
Not approved for us UFN

> "The New Yorker has obtained information and evidence from several former senior Ukrainian government officials who served with President Yanukovych in late November 2013 – early 2014. They all said that Yanukovych had told them several times during that time period that Assistant Secretary of State Victoria Nuland had pressured him (Yanukovych) during this time period to align with the EU Economic Association – and to be adverse to Russia – or else, she would use the arrest and extradition of Dmytro Firtash as leverage to pressure Yanukovych to agree.
>
> One senior official was said Nuland told him this directly, in person, around the time of the February 2014 meeting when Yanukovych told Nuland that he had reversed his decision to align with the EU Economic Association, which he has told her in early November 2013 under pressure from her to do soand, instead, would remain neutral as between association with the EU vs. Russia and the Eurasian Economic Union.

Timeline of arrest orders, reversal, and reinstitution of arrest of Firtash to support this conclusion:

--June 20, 2013: The US unsealed and made public the indictment by a Chicago Grand Jury of Firtash -- not for paying bribes or for conduct involving the US or any US company, but rather, for only an alleged **plan** to bribe individual Indian officials.

[Note – no arrest warrant was issued at the time the indictment was unsealed – and no explanation has ever been given why not).

In the indictment, there was no allegation whatsoever that Firtash has paid any bribe to any Indian official for any purpose much less to obtain a mining license;. In fact, he never did – as he has publicly stated, despite repeated media misreporting, even after corrections, that he was indicted for "bribery."

Moreover, the following facts are not in dispute by the government:

(1`) the mining license allegedly the reason for paying the bribe was never issued - ever;
(2) The Indian state investigation body investigated all these allegations and Indian officials named in the indictment and found no basis to prosecute anyone;
(3) Firtash had never visited the US, did business the US, or had any agent or pattern involved in the US; and
(4) no economic effect of the alleged "bribery plan" was alleged as occurring in the US – and to this day the US prosecutors have never argued any such effect in the US existed at the time of the indictment or exists now.]

--October 30, 2013: The US Department of Justice (DOJ) sends the arrest warrant of Dmitro Firtash by email to the Justice Ministry of Austria.

--November 1, 2013, 22:20 hours: Two days later, the US DOJ reverses the decision to issue an arrest warrant without explanation – and withdraws that decision without explanation by email to the Austrian Ministry of Justice (MOJ).

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--November 3, 2013, 18:07 hours: DOJ confirms the withdrawal of that arrest warrant in email to Austrian MOJ – less than a day before Assistant Secretary Victoria Nuland is due to meet with Ukraine President.

--November 4, 2013: The next morning, Nuland met with Ukraine President Yanukovych. President Yanukovych told several senior Ukrainian government officials immediately after this meeting that Nuland "threatened" to "reinstitute that arrest warrant of Firtash'

[**Note: this is a US State Department official making a pronouncement to the leader of a foreign government that she has the ability to control what the US Department of Justice does or does not do when it comes to law enforcement decisions]** unless Yanukovych agreed to align with the EU Economic Association and to **reject neutrality** and or to accept a loan from Russia and align with the Russian-led economic group.

[Note: Nuland was not only dictating the decision must be to align with the EU as the US government was dictating, but **neutrality was not acceptable** – much less aligning with Russia and its economic association.

Question: Was it the policy of the US Government, all the way to and including President Obama, that neutrality of Ukraine was unacceptable and if Yanukovych chose neutrality as in Ukrainian's interest, Nuland would retaliate against him by **causing the US DOJ to issue an arrest warrant** of Firtash for a "scheme" to bribe Indian officials where no bribe was every paid involving all Indian officials and an Indian mine having nothing to do with the US? Or was this her own decision to reject neutrality even if there was assurance of non-alignment with Russia or its economic association?]

--It is publicly known, and the former senior Ukrainian officials have confirmed, that as a result of these threats by Nuland to us Firtash as leverage, Yanukovych was forced -- against his will -- at his meeting with Nuland on November 4 to agree to align with the EU and to reject neutrality or alignment with Russia and its economic association. After succeeding in pressuring the president of Ukraine to do what she dictated, , she then allowed the **withdrawal** of the arrest warrant of Firtash to remain unchanged.

--November 21, 2013: Yanukovych announced that he had changed his mind and finally decided to **remain neutral**, neither to align with the EU nor Russia. Senior Ukrainian officials have said this was the view of what was in the best interests of the Ukrainian people – i.e., to have good trade relations with both Russia and the west.

--December 21, 2013 [OTTO – CHECK THIS DATE PLEASE]: Nuland visits Yanukovych. Former Ukrainian officials say that Nuland was angry at the meeting at Yanukovych's reversal.

--One senior Ukrainian official present at the meeting who had a direct conversation with Nuland about this said that Nuland told him directly that she was angry at Yanukovych's reversal to opt for neutrality rather than a pro-EU, anti-Russian stance, and that, *in retaliation*, she would **cause the arrest warrant of Firtash to be issued again**. However, Yanukovych refused and determined to remain neutral, to align with neither the EU nor the Eurasian Economic Union (dominated by Russia)..

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--February 27, 2014: Ukrainian senior officials say that as a result of Yanukovych's refusal to yield to Nuland's demands, the Austrian Ministry of Justice receives a new arrest warrant from the US Department of Justice, and and the Austraian MoJ causes Firtash to be arrested when he next returns to Vienna.

--March 12, 2014: As a result of Nuland's intervention and instructions to the US DOJ, the Austrian police arrests DF when he is visiting Vienna with his family.

Unavoidable inference:

Nuland used the threat of arresting Firtash as leverage to cause Yanukovych to align with the EU, reject neutrality and trade with both east and west, and to align against Russia. She had proven, as she knew she was doing, that she could cause the US Justice Department to issue an arrest warrant, withdraw an arrest warrant within days, and then re-issue the arrest warrant within weeks after Yanukovych changed his and refuse dto do what she dictated.

Therefore, these facts prove beyond doubt that the US demonstrated that what was behind the arrest of Firtash, and thus, the extradition request, was a geo-political motivation expressed by Assistant Secretary Nuland, that she even boasted about her power to cause the US DOJ to issue an arrest warrant, withdraw it, and re-issue it within a matter of weeks or days as proof that she could cause the DOJ to implement her and/or the Obama Administration's foreign policy goals – opposed by leaders of the Ukrainian government – with Dmytro Firtash, because he was a supporter of the president's, used as a political pawn and leverage to pressure the Ukrainian government to do what Nuland wanted.

Other post-Firtash events and facts that might support the conclusion that the US State Department or someone in geopolitical sphere continued to influence on Austrian law enforcement process. The DOJ urged the Austrian government that Firtash remain in custody by falsely claiming that Firtash, who did not even know that he is investigated by US authorities, had been "extremely elusive". When the Austrian Court set the bail at an unprecedented amount of €125 million ($175 million) the transfer of Firtash's cleared bail funds to the Court's account was delayed :

March 19, 2014: The bail money is transferred and received by BAWAG, an Austrian bank where the Austrian government and Courts maintain their accounts. Even though the bail money was transferred from an accredited bank in Germany and should have immediately been credited to the Court's account, BAWAG instead files a money laundering suspicion notice with the Austrian Financial Investigation Unit of the Austrian police. BAWAG declines to provide the Court with more information on what grounds any money laundering suspicion is based.
--March 21, 2014: The Financial Investigation Unit of the Austrian police clears the funds transferred for bail to BAWAG as free from money-laundering and thus can be credited to the account of the Austrian court to allow Firtash to be released on bail. The Court notes that its own investigations additional to the FIU's did not raise any suspicion that the money used for the bail was laundered.

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--March xx, 2104: BAWAG transfers the funds to the Austrian court and Firtash is released on bail – three days after the bail money was transferred and received by BAWAG.

--There was never any explanation as to why BAWAG delayed the transfer of the cleared $175 million bail funds and whether Nuland or the State Department or any US government entity, or any business interests in the US – such as the Cerberus Equity (Hedge) Fund, which allegedly had a substantial investment in the bank – influenced the delay by the bank to transfer of the funds. Rumors were that a call was made by Cerberus Capital Management -- to BAWAG senior official to cause the delay in transfer and there is also a rumor that someone at State or in the USG called a senior official Cerberus, perhaps the founder Steven Feinberg

--April 4, 2014, US DOJ unseals the indictment for a "plan" to bribe – still no allegation any bribe was ever paid and no allegation that the mining license was issued or the US was impacted by the bribery "plan."

# # #

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Dear Mr Kapp,

I am a freelance journalist and work for the magazine FOCUS. In documents of the Wirecardbank, I also came across invoices of the Park Hyatt in Vienna for board and lodging of Messrs Igor Fruman, Lev Parnas, David Correia, a Mr Iakovlev and a Mr Radionov from the months of August, September and October 2019. As is well known, the first three have been travelling in the interests of Donald Trump via Rudy Giuliani. I have evidence that these invoices - totalling around €23,000 - were paid by your client Dmytro Firtash's group of companies.

I have the following questions for Mr Firtash:

# # # #

Dear Mr. Hein: The answer to #1 is the only answer on the record.

"Lanny J. Davis, American attorney for Mr. Firtash."

Everything else is off the record.

Off the record to you here – Please forward the following comment to your editor and send me his name, email address, and phone number.

Off the record

Your questions assume facts that are not true, and are statements at times of untruths rather than questions. I object as an attorney ahead of time to your writing untrue facts or assertions based on assumptions or speculations from other media – if it is untrue in other media that does not make it true when you repeat it. I would like to discuss with your editor if any of your untrue assertions or assumptions about Mr. Firtash are published. Thank you for your courtesy.

Lanny J. Davis

Attorney for Mr. Firtash

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# # #

See my answer to # 1 below and the rest of my non-answers to the rest of your questions.

1: Why did he do this?

Off the record:

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Your question is not capable of response because of your use of the word "this." So I will define what I think you meant based on our off the record conversation.

This response is on the record based on my definition of what you mean by "this."

"Mr. Firtash and his company Group DF made payments only to Mr. Parnas and only in his capacity as a paid consultant to the two attorneys who represented Mr. Firtash at the time.

"Mr. Firtash has never talked to Mr. Giuliani. Nor has he had anything to do whatsoever with any effort by anyone to dirty up Joseph Biden or his son or to assist Mr. Trump.

--Lanny J. Davis, an American attorney for Dmytro Firtash

2: Who asked him to do it?

Off the record

See answer to #1. Mr. Parnas submitted the invoices.

3: What was discussed in Vienna?

Off the record

Do not know what dates you are referring to.

4: Was Mr. Firtash also present at the meetings? Or an employee of his group of companies?

Off the record

Do not know what meetings you are referring to.

5: Who are Mr. Iakovlev and Mr. Radionov?

Off the record

I have never heard of these names.

6: How many other meetings in the interest of Giuliani/Trump were arranged and paid for by the DF group?

Off the record

None. Your use of the word "other" assumes a fact that is not true. See answer to #1 above.

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7: Why Vienna, actually? And who chose the hotel?

Off the record:

See answer #1.

8: What was promised to Mr. Firtash in return for his support and by whom?

Off the record

See #1.

Nothing was promised – if you imply there was something promised that would be false.

Please answer me by Thursday of this week.

Best regards from Berlin

Jan-Philipp Hein

Autor / Journalist / Salonkolumnist

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