# THE CONCEPT OF POLITICAL AND TERRORIST OFFENCES IN EXTRADITION MATTERS: A LEGAL PERSPECTIVE

***Vesna Stefanovska*, *LL.M in International Law, LL.M in Civil Law, PhD candidate***

South East European University, Republic of Macedonia

**Abstract**

The cornerstone in the law of international extradition of fugitives from justice is a policy of cooperation between nations. This cooperation must take into account both the differences in the domestic legal systems and the advancements of technology in areas that directly affect the criminal justice system. In the context of political offences in extradition matters, it must be pointed that there is generally accepted rule which states that political offenders i.e. those who committed criminal offences are not subject to international extradition, which points that they cannot be extradited and judged for committed offences.

Political offence exception is a universal principle, is justified by the need for States to remain detached from political conflict and protects the right of States to grant asylum to political refugees. Political offences in some way are connected with terrorist offences: two very important and interesting cases are Abid Naseer v United States of America and Gaforov v Russia which will be analyzed in this paper.

The increasing use of terrorism by politically motivated persons has combined with the rapid scientific advances in transportation and communication and present a very real danger to the control and suppression of international crime.

**Keywords:** Political offences, terrorism, political crime, extradition

## 1.Theoretical aspect of political offences

The application in practice of the universally accepted principle of non-extradition for political offences is seldom free from controversies due to difficulties in determining what acts constitute a political offence. Although there are many definitions of political offences, no satisfactory and generally acceptable definition of such as offence has been found yet, and those definitions which have been given in practice are of little value, since they do not determine precisely the essence of political offences. Moreover exists in this regard a confusion of terminology because often many serious crimes against law of nations are referred to as political crimes, which are not regarded as political offences in the sense of that term in extradition treaties. Although the task of defining political offences is very difficult, before embarking upon the principal inquiries, the definition of such offences seems indispensable ( Przetcznik, p.103).

As to the definition of political offences, confusion is caused by the use of the same expression – "political crimes" for diametrically different notions, i.e., for "political offences" and "common crimes".

For example one definition of political offences says that "political crimes are such as are incidental to, and form a part of political disturbances". Some authors think that political crimes and political offenses are the same – common crimes. In such sense the term "political crimes" was used by the Council of the League of Nations and the Special Committee of Jurists which referred to common crimes committed against foreign officials as "political crimes" League of Nations regarding the responsibility of a State involved by the commission of a political crime in its territory.

The term "political crime" used by the Council of the League of Nations and by the Special Committee of Jurists with reference to the very serious crimes committed against foreign officials, was erroneous and misleading, since calling a very serious common crime a "political crime" creates confusion with the notion "political offense" which, in the sense of extradition has a diametrically different meaning from the notion "political crime". Under universally accepted practice, the political offender – person accused of or convicted for a "political offense", is eligible for asylum and not subjected to extradition; but the common criminal, i.e. the person

accused of or convicted for a "political crime" is not eligible for asylum and is subject to extradition. Therefore, the expression "political crime" which leads into a confusion in the definition of political offenses, should be eliminated from the terminology of such definition. ( Przetcznik, p.104). In one of the oldest cases of political offense is given a definition of political offenses, where the court held that for an offense to be political, it must be committed in the course of a political disturbance during which two or more parties in the State are contending and each seeks to impose the Government of its choice on the other, and it must be in pursuance of such objective.[10]

The concept of political offenses was reaffirmed four years later in *In Re Murier* by the British Court of Queen's Bench, which laid down that in order to constitute an offence of a political character, there must be two or more parties in the State, each seeking to impose the government of their own choice. An interesting definition of political offenses is given by the Chilean Court in the *Matter of the Extradition of Hector Jose Campora and Others (1957).* In that Court's opinion *"a political offense is that which is directed against the political organization of the state or against the civil rights of its citizens and that the legally protected rights which the offense damages is the constitutional normality of the country affecte"*..

A definition of political offense is also given by the federal tribunal of Switzerland in *In Re Ficorilli* ( 1951) to the effect that the one must regard as a political offence an offence which is the consequence and manifestation of an extraordinary agitation or tension between political parties, and of disturbances which lead the parties to use methods of violence against their opponents, causing disorders and large number of crimes of violence; and any act must be considered to be a consequence of reprisals in a general political uprising and a struggle for power ( Przetcznik, p.107).

**2. Political offence exception**

Domestic law and extradition treaties often provide that a 'political offence' is not extraditable. This political exception is not required by international law, and must be clearly distinguished from provisions in domestic law or mutual legal assistance or extradition treaties that assistance or extradition may be refused if the real purpose of a request is to prosecute

[10] Castioni case (1891) argued in front of the British Court of Queen's Bench

or persecute the person for his political opinion rather than for the crime itself.

There is no agreement internationally on what constitutes a political offence: whether it is the purpose or motive that is political or the crime is directed at the state, such as the assassination of a head of state (Aust,p.266).

A substantial number of countries recognize two categories of political offences: pure and relative. Pure political offences are crimes against the state. Relative political offences are those in which a common crime is so connected with a political act that the entire offence is regarded as political. Typically, the factor distinguishing pure from relative political is the nature of the crime charged. Pure political offences, as crimes against state, comprehend sedition, treason, and kindred activities, e.g. printing seditious literature. Pure political offences are not listed offences in many bilateral extradition treaties between states: they therefore provide no basis for an extradition request. Unlike pure political offences, relative ones are not necessarily subject to immediate identification (Atkins, p.413).

Traditionally, a State is not obliged to surrender persons wanted in connection with an offence which it considers to be of a political nature. The political offence exception is a universally recognized principle of extradition law and is related to the principle of sovereignty (Duffy, p.110). It is justified by the need for States to remain detached from political conflict and protects the right of States to grant asylum to political refugees. While the inclusion of the political offence exception in extradition treaties has offered some protection to fugitive from States seeking to silence political opponents, arriving at a satisfactory definition of political offence is frequently fraught with difficulties.

Although extradition treaties do not necessarily define the term political offence, the phrase “offence of a political character” has generally been accepted as suggesting some opposition on the part of the fugitive to the requesting State. Thus, in determining whether the offence amounts to an offence of a political nature, the requested State may be required to consider both the motive of the requesting State and of the fugitive before deciding whether the request for extradition is *bona fides* (Bantecas and Nash,p.302).

States should not be obliged to surrender persons for extradition if the offence mentioned in the extradition request is incidental to civil unrest. However some States extradition treaties traditionally limits this exception to purely political offences, which have been described as offences of opinion,

political expression or those which otherwise do not involve the use of violence. In some cases extradition is refused on the basis that the offences listed in the extradition request amounted to political offences. The increase in international terrorism has led to the willingness of States to limit the extent of the political offence exception, which is generally no longer applicable to crimes against international law. Accordingly, while the political offence exception has been described as the most venerable of the mandatory exception to extradition, there are so many offences excluded from consideration in most extradition treaties that in practice it is rarely used successfully.

Within Member States of the Council of Europe, the scope of the political offence exception has been reduced by the European Convention on the Suppression of Terrorism[11], which lists a range of offences associated with terrorism that are precluded from being regarded as political offences. Similar provisions contain European Convention on Extradition 1957 such as:*"extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested party as political offence or as an offence connected with a political offence*".[12]

Also the 1975 Additional Protocol to the European Convention on Extradition, which specifically excludes war crimes and crimes against humanity from the definition of political offence. Although race, religion or political opinion was considered as a ground for refusal of a request for surrender, it was decided that the EAW would abolish the political offence exception in relation to surrender between Member States.

**3. Transformation of political offenders into "Terrorist"**

For the purpose mainly of extradition, many countries regard political offences as non-extraditable, while the international impetus is to depoliticize most acts and, thus render them extraditable. The relevant jurisprudence shows that a political offence must primarily satisfy the so-called "incidence test".

In some cases offenders should not be extradited if the crimes concerned were "incidental to and formed a part of political disturbances". In fact there must exist a close nexus between the violence and the political

[11] Adopted in Strasbourg 1977 by member States of the Council of Europe.

[12] Art.3 of the European Convention on Extradition 1957

objective of forcing a regime to resign or change its policies, taking place in the course of a violent disturbance.

In determining whether the political aspect of the offence is of a predominant character, domestic courts have enquired whether the offender could reasonably expect that the offence would yield a result directly related to the political goal. This query has since become more explicit by making it clear that the political motive of an offence is irrelevant where it is likely to involve killing or injuring members of the public. Terrorist offences are included in many international conventions, despite its outward liberal appearance. These conventions demand that member states criminalize the relevant acts and further render them extraditable. However, all the described in anti-terrorist conventions refer to acts which either directly or indirectly are intended to cause or likely to inflict indiscriminate death or injury to members of the public, and which are not committed in the context disturbances. Despite broad ratification of anti-terrorist treaties, national judges still enjoy some discretion in deciding on a case-by-case basis the political character of an offence in relation to the motive involved and the means pursued to achieved it (Bantecas, and Nash, p.228).

Such judicial determination may well depend on certain occasions on a common sense of justice prevalent at any given time in a particular community, due to its affiliation and sympathy to the offenders and their aims.

Many governments are trying to define terrorist and terrorist offences and relate them to political offences. When a government does embrace a particular definition of terrorism or terrorist, the defense must analyze it with care, both in terms of its applicability to the client and in terms of its general consistency. In some countries, terrorism is defined as “premeditated, politically motivated violence perpetrated against noncombatant targets by sub national groups”( Atkins, p.407). Since at least the 1920s and 1930s many states have accepted terrorism as a transnational crisis requiring a way out initiated at international law. Throughout history, the term „terrorist“ has been used by militant groups of different religious orienttaion, often blended with nationalist and socio-political ideological elements (Chakraborty, p.4).

### 3.1 Definition of terrorist offences

After the Second World War, the concept of terrorism resurfaced in episodic efforts by the International Law Commission (ILC) to codify international crimes between 1954 and 1998. In 1954 the ILC invoked, but did not define „terrorism“ as a form of criminal aggression by one state against another (Saul, p.1).

Terrorism today is a global phenomenon that threatens civil society. It can be defined as the use or threat of action where, the action involves serious violence against a person, serious damage to property, endangers a person's life or creates a serious risk to the health or society of the public. Despite the currently popular law- of-armed conflict approach, the law-enforcement approach remains the principal means for dealing with global terrorism. The strategic key to combating transnational terrorist activities turns on the apprehension, prosecution, and punishment of persons who perpetrate or conspire to commit such criminal offences. To that end, close international cooperation and collaboration is required, as are the open diplomatic channels and feasible legal means to accomplish those ends.

Terrorist offences raise from acts of terrorism and other forms of counte-terrorism and transnational crimes. Under international law, terrorism is understood to be systematic attack on non-military objectives in order to force the military elements of the adverse Party to comply with the wishes of the attacker by means of the fear and anguish by such an attack (Chakraborty, p.4). Terrorism covers not only acts directed against people, but also acts directed against nstalations which would cause victims as a side-effect.

The chief forum for coordinating multilateral responses to the world-wide terror threat is the United Nation. Also UN is the principal source of international legal measures to combat global terrorism. The General Assembly's adoption of its 1994 Declaration on Measures to Eliminate Terrorism signaled the UN's formal commitment to condemn and suppress terrorist activities, and in 1996, the General Assembly adopted its Declaration to supplement the 1994 Declaration, which seeks to restrict granting asylum to possible terrorists, remove the political offences exception for persons who commit terrorist acts, and promote the extradition of offenders. However, the principal UN contribution to combating terrorism remains the series of international counter-terrorism instruments adopted between 1963 and 2000.

Since 1960 four specific issue-areas tended to dominate international concern over global terrorism: crimes against the safety of international aviation, crimes against the safety of individual persons, crimes against the safety of maritime navigation, and crimes associated with violent terrorist activities (Alexander, p.150).

Since the attacks of 11 September 2001, the European Union (EU) has been determined to step up against terrorism. With this in mind, it has adopted a framework decision urging EU countries to align their legislation and setting out minimum rules on terrorist offences.

After defining such terrorist offences, the framework decision lays down the penalties that EU countries must incorporate in their national legislation (Chandra, p.268). The framework decision on combating terrorism harmonizes the definition of terrorist offences in all EU countries by introducing specific and common definition.

Its concept of terrorism is a combination of two elements: [13]

- An objective element, as it refers to a list of instances of serious criminal conduct (murder, bodily injuries, hostage taking, extortion, committing attacks, threatening to commit any of the above );
- A subjective element, as these acts are deemed to be terrorist offences when committed with the aim of seriously intimidating a population, unduly compelling a government or international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic, or social structures of a country or an international organization.

Furthermore, EU countries must ensure that certain international acts are punishable as offences linked to terrorist activities even if no terrorist offence is committed. These include:

- Public provocation to commit a terrorist offence;
- Recruitment and training for terrorism
- Aggravated theft, extortion and falsification of administrative documents with the aim of committing a terrorist offence.

[13] www.europa.eu

### 3.2 International mechanisms against terrorism

With the increase of globalization we are witnesses that the criminality, even common crime, has lost its primarily territorial (domestic) nature and we are faced with the problem of international or transnational crime. With criminals acting and moving across borders, a need and a common practice for exercise of extraterritorial criminal jurisdiction have arisen. Also with migration across borders, resettlement and intermarriage of people is becoming an everyday fact of life and phenomena.

Special "terrorism" laws were most common in states confronting national liberation or separatist violence between the 1940s and 1980s (such as India, the UK, Israel and France); later in states (as in Europe and Latin America) that experienced extreme left-wing or other political violence in the 1970s and 1980s; and occasionally in states affected by religious violence (such as Egypt and Algeria in the 1990s). The legal concept of terrorism has never had a static or innate content, but varies according to prevailing political exigencies (Saul, p.1).

Due to the increased mobility of individuals including criminals and due to the transboundary or international nature of crimes involved, the necessity for international mechanisms with a solely purpose to combat against terrorism has become only goal to democratic states all over the world. For that purpose, were brought and then adopted the Convention on the Prevention of Terrorism and European Convention on the Suppression of Terrorism.

According to the Convention on the Prevention of Terrorism[14], terrorist offences are defined as any offences within the scope of and as

[14] At its 109th Session on 8 November 2001, the Committee of Ministers agreed to take steps rapidly to increase the effectiveness of the existing international instruments within the Council of Europe on the fight against terrorism by, setting up a Multidisciplinary Group on International Action against Terrorism (GMT). After this GMT was reviewing the implementation of an examining the possibility of updating existing Council of Europe international instruments relating to the fight against terrorism, in particular the European Convention on the Suppression of Terrorism, in view also the possibility opening of that Convention to non-member States, and the other relevant instruments. In December 2004 the draft of the Convention on the Prevention of Terrorism was adopted and then submitted it to the Committee of Ministers which authorized consultation of the Parliamentary

defined in the treaties. Additionally a State which is not a party to a treaty may declare that, in the application of this Convention to the Party concerned, that treaty shall be deemed not to be included and this declaration shall cease to have effect as soon as the treaty enters into force for the Party having made such a declaration, shall notify the Secretary General of the Council of Europe. According to article 3 of the Convention, each Party shall take appropriate measures, particularly in the field of training of law enforcement authorities and other bodies with a view to preventing terrorist offences and their negative effects while respecting human rights under international law.

The purpose of the Convention is to enhance the efforts of Parties in preventing terrorism and its negative effects on the full enjoyment of human rights and in particular the right to life, both by measures to be taken at national level and through international co-operation, with due regard to the existing applicable multilateral or bilateral treaties or arrangements between the Parties. The Convention purports to achieve the objective, on the one hand, by establishing as criminal offences certain acts that may lead to the commission of terrorist offences, namely: public provocation, recruitment and training and, on the other hand, by reinforcing co-operation on prevention both internally, in the context of the definition of national prevention policies, and internationally through a number of measures, *inter alia*, by means of supplementing and, where necessary, modifying existing extradition and mutual assistance arrangements concluded between Parties and providing for additional means, such as spontaneous information, together with obligations relating to law enforcement, such as the duty to investigate, obligations relating to sanctions and measures, the liability of legal entities in addition to that of individuals, and the obligation to prosecute where extradition is refused.

European Convention on the Suppression of Terrorism[15] was brought because Member States considered that the aim of the Council of Europe is

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Assembly of the Council of Europe. In May 2005, the Committee of Ministers adopted the Convention and decided to open it for signature by the member States.

[15] At a meeting in Obernai (France) on 22 May 1975, the Ministers of Justice of the member States of the Council of Europe stressed the need for co-ordinate and forceful action in this field. Finally in June 1976 in Brussels, the European Ministers of Justice took note of the

to achieve a greater unity between its members, mainly because of the growing concern caused by the increase in acts of terrorism and wishing to take effective measures to ensure that the perpetrators of such acts do not escape prosecution and punishment, so they were convinced that extradition is a particularly effective measure for achieving the goals in order to bring perpetrators before justice.

For the purpose of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives: [16]

a. an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970;
b. an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal 1971;
c. a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;
d. an offence involving kidnapping, taking of hostage or unlawful detention;
e. an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;
f. an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such offence.

For the purpose of extradition between Contracting States, they may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, such as violence against life, physical integrity or liberty of a person. The same applies to a serious offence involving an act against property and shall apply to an attempt to commit any

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draft convention and expressed the hope that its examination by the Committee of Ministers be completed as quickly as possible

[16] Art 1 from the European Convention on the Suppression of Terrorism 1977

foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.[17]

The purpose of the Convention is to assist in the suppression of terrorism by complementing and, where necessary, modifying existing extradition and mutual assistance arrangements concluded between member States of the Council of Europe.

The European Convention on the Suppression of Terrorism aims at filling the lacuna by eliminating or restricting the possibility for the requested State of invoking the political nature of an offence in order to oppose an extradition request. This aim is achieved by providing that, for extradition purposes, certain specified offences *shall never be regarded as* "political" (Art 1) and other specified offences *may not be* (Art 2), notwithstanding their political content or motivation.

**4. Extradition of citizens for terrorist offences**

It's a common sense idea that criminals should not be able to escape justice in one country simply by fleeing to another country if they made serious violations or committed any offence that is punishable and extraditable. Of course, it's also true that all democratic nations have the obligation to protect the rights of their citizens. The crucial legal question concerning trials of alleged terrorists is *where* and *how* they should be prosecuted. The prosecution of terrorist acts is thus left to municipal legal systems in accordance with the international treaties based on co-operation schemes against terrorism (Bianchi, p.330).

These anti-terrorism conventions impose obligations on national systems to either prosecute terrorists in their national courts, or to extradite them to States Parties that are willing to prosecute them. If extradition is refused by a requested State for terrorist offences, the States must provide in its own national legislation means by which to punish and prosecute such offences. State practice shows that the political offence exception rarely represents an obstacle to extradition in cases of international terrorism. The political offence exception has been expressly excluded for persons, carrying out specific and precisely defined violent terrorist offences. In some cases, political offence exception is used by terrorists to avoid extradition, although terrorist offences are not regarded as political offences (Chandra, p.196).

[17] Ibid, Art.2

Whereas terrorist attacks certainly threteaned citizens rights to security, several of the responses to terrorism designed by national governments and international organisations have challenged the principle that governments cannot restric individual freedoms, except on the basis of the law and a court decision ( Lennon and Walker, p.89). Because of this, extardition for terrorist offences is allowed and many of the extardition proceeding are based upon crimes which are in connection with terrorism and by their nature, they are extarditable.

In relation to requests for extradition for terrorist acts, however the rule of double criminality should not represent an obstacle to the rendition of suspected terrorist from one to another country. The conduct of which those individuals will be accused is undoubtedly a serious criminal offence under the law of the both countries.

Foreign citizens or citizens without nationality that commit terrorist offence can be subject to extradition because the offence is punishable with imprisonment in most countries. The offences of belonging to a terrorist organization or cooperation with a terrorist organization are also extraditable offences when committed by foreigners.

### 4.1 Case of Abid Naseer v. United States of America

Abid Naseer originally came to the UK on a student visa and studied in Manchester and Liverpool. In July 2010, he was arrested in Middlesborough by officers from West Yorkshire Police on suspicion of being a key player in an alleged plan to attack unspecified targets in Manchester. But, the US said it wanted to put Naseer on trial for his part in alleged plots to plant bombs in the UK, New York and Norway . Abid Naseer is 24 years of age and he is citizen of Pakistan where he was born.[18]

The case of Abid Naseer was brought in front of the Westminster Magistrates' Court where the Court had to bring a decision about the extradition request for terrorist offences. The U.S authorities seek a trial in New York City following a Grand Jury indictment from the Eastern District of New York dated from June 2010 alleging three counts as follows: [19]

[18] www.judiciary.gov,uk

[19] The US said that Naseer was operating under the direction of al-Qaeda and was the UK contact in a broad international network. Also Abid Naseer was planning bomb attacks in UK under the direction and control of al-Qaeda.

- Providing material support to a foreign terrorist organization, specifically al-Qaeda, in violation of 18 U.S.C. sections 2339B that is punishable by a maximum penalty of 15 years imprisonment.
- Conspiracy to provide material support to a foreign terrorist organization, specifically al-Qaeda, in violation of 18 U.S.C. section 2339B, that is punishable by a maximum penalty of 15 years imprisonment.
- Conspiracy to use a destructive device during and in relation to one or more crimes of violence, specifically providing and conspiring to provide material support to a foreign terrorist organization, in violation of 18 U.S.C. section 924, that is punishable by a maximum penalty of life.

U.S evidence showed that there were communications, e-mail about weddings, marriage, girlfriends, and computers and weather that were codes that referred to attacks, bomb ingredients travel documents and target sites.

Naseer and his associates prepared to conduct a terrorist attack in Manchester, England – likely in the vicinity of St Anne's Square in the middle of April 2009. Before these preparations, Nasser received training from al-Qaeda in Pakistan where he learned how to purchase ingredients and components for explosives, conducted reconnaissance at several possible target locations, transported reconnaissance photographs back and forth to Pakistan and maintained frequent e-mail contact with al-Qaeda during the entire period. Naseer was arrested for alleged terrorist activity by U.K police. Following the instant extradition arrest Abid Naseer's solicitors wrote to the Director of Public Prosecutions (D.P.P) inviting him to proceed against Abid Naseer as a domestic U.K terrorist trial, but D.P.P declined to accept that invitation. Till the first hearing in fron of the Court, Naseer was in custody for several months.[20]

After several hearings, lawyers for Naseer were against extradition to U.S and they further argued that extradition should be halted because the U.S could later deport him to Pakistan where je could be tortured or killed by

[20] This is documentary and physical evidence for the period between December 2008 and April 2009 of the U.S intelligences.

Pakistan's secret services. [21] On this U.S Government said that they will give assurance that Naseer won't be deported in Pakistan.

The Association of Pakistani lawyers, Solicitors, barristers, and Judges in UK has expressed its concerns on the London's Magistrate court's decision on the extradition request of the United States of Abid Naseer due to fear of inhuman and degrading treatment, rendition and fair trial issues as well as system of parole whereby longer sentences are imposed.[22]

The Westminster Magistrates' Court approved the US's application for extradition and the case will now go to the home secretary for approval according to S.87 from the Extradition Act 2003. Abid Naseer has a right to appeal to the High Court and if his appeal is denied he will be deported to U.S where he will be charged for terrorist offences, although this case may take several years to its finish.

**4.2 Case of Gaforov v. Russia**

Abdurazok Abdurakhmonovich Gaforov was born in 1973 and lived in Khudzhand, Tajikistan until his arrest. In 2005 several persons were arrested in Khudzhand on suspicion of membership of Hizb ut – Tahrir (HT), a transnational Islamic organization, banned in Russia, Germany and some Central Asian republics. Subseuently, Gaforov learnt that some of the arrestees had testified before the prosecuting authorities that he was a member of HT and had printed various materials form internet. On 16 February 2006 the prosecutor's office of the Sogdiyskiy Region of Tajikistan instituted criminal proceedings against Gaforov on suspicion of membership of an extremist organization.

Gaforov was suspected of having actively worked with HT by printing out leaflets and religious literature for that organization. Then he was arrested and placed in custody.[23] The prosecutor office opened a further

[21] Pakistan remains a state dominated by its military and intelligence agencies. There is a long and well documented history of disappearances, illegal detention and of the torture and ill-treatment of those detained usually to produce information, a confession or compliance. Al-Qaeda and the Taliban are now in active conflict with the Pakistan state. Anyone, such as Naseer, suspected of belonging to either would be at risk at the hands of the ISI.

[22] www.judiciary,gov.uk

[23] Gaforov was held in custody for three months, where he was systematically beaten up and tortured and for that period he received no food.

criminal case against Gaforov in connection with his alleged terrorist activities with HT. In particular he was suspected: [24]

- Having secretly studied extremist literature from by other members of HT
- Having worked for the organization as an IT specialist
- Having printed out the organization's leaflets and other literature and secretly distributed it among non-members of the organization.

While he was in custody, in May 2006, Gaforov escaped and was hiding in Tajikistan until December 2006, when he moved to Kurgyzstan and in May 2007 arrived in Russia. On 5 August 2008, Gaforov was arrested in Moscow as a person wanted by the Tajikistan authorities and in September, the Tajikistan Prosecutor Office sent to Russian Prosecutor Office a request for the extradition of Gaforov to Tajikistan in connection with the charges concerning his membership of HT. The letter stated that Gaforov would be tried only of the charges for which extradition was being sought, and that he won't be extradited to a third country.

In 2008 Russian Prosecutor Office decided to extradite Gaforov to Tajikistan. Because Gaforov had not obtained Russian citizenship, there were no other grounds for not extraditing him to Tajikistan. Gaforov appealed against the decision for extradition.[25] The City Court dismissed the applicant's complaint and Gaforov appealed to the Supreme Court of the Russian Federation.

Gaforov complained that, if extradited to Tajikistan, he would run a real risk of being subjected to ill treatment in breach of Article 3 of the European Convention of Human Rights. Gaforov also contended under Article 13 of the Convention that he had no effective remedies in respect of his allegations of possible ill-treatment in Tajikistan. He also complained under Article 5 that his detention had been unlawful.[26]

[24] www.judiciary.gov.uk

[25] Gaforov in his appeal stated that while he was in custody in Tajikistan, he was beaten and tortured and declared that Tajikistan authorities were not able to provide effective guarantees against the risk of unfair criminal proceedings, especially because in 2008 the Supreme Court of Tajikistan had declared HT a terrorist organization,

[26] www.judiciary.gov.uk

In 2010 Gaforov submitted an appeal to European Court of Human Rights claiming damage.[27] On 21 October 2010, the European Court of Human Rights held that the extradition of Abdurazok Abdurakhmonovich Gaforov by Russian authorities to Tajikistan would violate Russia's obligation under the European Convention on Human Rights to respect the principle of non-refoulement in countries where there is a real risk that the extradite would be subject to torture or inhuman or degrading treatment. Abdurazok Abdurakhmonovich Gaforov is sought by Tajik authorities on suspicion of membership of Hizb ut-Tahrir, an Islamic organization considered as terrorist by Russian and Tajik authorities.

The Court holds that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance to the Convention. The Court also held that the suspect did not have at his disposal any procedure for a judicial review of the lawfulness of its detention pending extradition, and that at least part of this detention period was not in accordance with the law, in breach of Article 5 of the European Convention of Human Rights.[28]

**Conclusion**

In a time when the humanity is faced with different kind of atrocities and criminal offences, there is a need for strong cooperation between states in light of combating with the terrorism and other forms of violation of international conventions and domestic legal systems of states.

It is a fact that the political offense exception, contained in all extradition treaties, protects from extradition, political offenders of all types, nonviolent and violent alike, including terrorists. In this relation it must be emphasized that the political offence exception often is justified by the need of the states to remain detached from political conflict.

Political offence exception must not be used by the criminal offenders in order to avoid extradition for committed crimes if there are not elements of political crime and if they have done crimes which can be classified as terrorism and by that classification they are automatically extraditable and can be subject of a procedure for extradition.

[27] Applicant claimed 15.000 Euros in respect of non-pecuniary damage and 90.000 Russian rubles (approximately 2.225 Euros) in respect of his representation by his lawyers.

[28] Judgment of the ECHR ( Application no.25404/09) - Strasbourg

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