(Translation)

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APPEAL

Black Case No. Or Por. 3 /2551
Red Case No. Or Por. 8 /2552

Certified true copy.
(Signed)
(Illegible)

Criminal Court

Date : 26th August 2009

Criminal Lawsuit

Between *Public Prosecutor, International Affairs Department, Office of the Attorney General* Prosecutor

Mr. Viktor Bout or Boris or Victor But or Viktor Budd or Viktor Bulakin or Vadim Markovich Aminov
Alleged Offender

Charge/Offense Extradition

I, the public prosecutor, International Affairs Department, Office of the Attorney General, hereby appeal the judgment to this Court which it was judged on 11th August 2009, as follows :

1. In this case, the prosecutor filed a lawsuit stating that, pursuant to the Act on Extradition between the Kingdom of Thailand and the United States of America, B.E. 2533, prescribing that the extradition between the government of the Kingdom of Thailand and the government of the United States of America in the Article 2 - An offense shall be extraditable if the conduct on which the offense is based is punishable under the laws in both States by deprivation of liberty for a period of one year or more or by a more severe penalty.

The government of the United States of America, represented by the Embassy of the United States of America in Thailand, sent a formal request according to the Diplomatic Letter No. 1415, dated 1st May 2008, with its Thai translation and required documents as stated in the Article 9 of the Treaty to the Ministry of Foreign Affairs to extradite the accused for prosecution in the United States. In this respect, Thai government, represented by the Ministry of Foreign Affairs and the Ministry of Interior, after consideration, decided to proceed with the request and authorized the public prosecutor to act as the prosecutor.

The accused was involved in conspiracy to commit crime with "FuerZas Armadas Revolucionarias de Colombia Ejercito del Pueblo" (FARC), a group of Colombian left-wing guerrillas designated by the U.S. Department of State as a foreign terrorist organization to protect their drug-trafficking business by using violence such as bombings, massacres, kidnappings, killing U.S. nationals and attacking U.S. interests in order to dissuade the Unites States from continuing its efforts to disrupt cocaine manufacturing and distribution activities as follows :

1. In/about November 2007 to March 2008, the accused and his conspirator(s) conspired to provide, compile weapons and train terrorism to FARC group to kill the U.S. nationals, kill the officers and supporters of the U.S. government who performed their duties in order to intimidate or force the U.S. government not to disrupt cocaine manufacturing and distribution activities by agreement to provide the millions of U.S. dollars worth of war weapons to be used to attack the nationals and properties of the United States in Colombia.

2. In/about November 2007 to March 2008, the accused and his conspirator(s) conspired to provide, compile weapons and train terrorism to FARC group with the purpose of intimidating or forcing the U.S. government not to disrupt cocaine manufacturing and distribution activities by agreement to provide the millions of U.S. dollars worth of war weapons to be used to attack the officers of the U.S. government.

3. In/about November 2007 to March 2008, the accused and his conspirator(s) conspired to provide, supply and train the use of war weapons such as surface-to-air missiles, guided ballistic missiles, including devices and components for assembly, installation and modification to FARC group, in order to use against the U.S. government with the purpose of intimidating or forcing the U.S. government not to disrupt cocaine manufacturing and distribution activities by agreement to provide the millions of U.S. dollars worth of war weapons to be used to attack the nationals and properties of the United States in Colombia.

For the acts stated in No. 1 to No. 3 from 10th January to 6th March 2008, the accused and his conspirator(s) discussed about providing and delivering surface-to-air missiles including devices and components several times through phone calls, meetings and electronic mails. Finally, on 6th March 2008, the accused was arrested in Thailand.

4. In/about November 2007 to March 2008, the accused and his conspirator(s) conspired to provide, supply and train the use of war weapons to FARC group, in order to use against the U.S. government with the purpose of intimidating or forcing the U.S. government not to disrupt cocaine manufacturing and distribution activities by agreement to provide the millions of U.S. dollars worth of war weapons to be used to attack the nationals and properties of the United States in Colombia..

It took place in Netherlands, Denmark, Russian Federation, Romania and Colombia, and it was related.

The acts committed by the accused are the offenses pursuant to the U.S. law for conspiracy to kill other people, conspiracy to kill the officers and employees of the U.S. government, conspiracy to acquire and use anti-aircraft missiles and conspiracy to provide material support or resources to a foreign terrorist organization which are the offenses pursuant to the provisions of U.S. Criminal Law, Title 18, Section 2332(b) and 3238, Title 18, Section 1114, 1117, and Section 3238, Title 18, Section 2332 g(a)(1)(b) and 3238, and Title 18, Section 2339(b)(1), (d)(1) and Section 3238, and are punishable by imprisonment for more than 1 year or by more severe penalty. The offenses are punishable by Thai law equivalent to the offenses in Criminal Law, Section 135/1 to 135/3. The duration of prescription in law is not expired. It is not a political or military offense. The U.S. authorities filed the suit against the accused on such offenses at the Court for the Southern District of New York,

U.S.A., which the arrest warrant was issued on 27th February 2008. The accused is never on trial, convicted or released for such offenses in the United States of America or Thailand. The accused is not being prosecuted in Thailand for offenses requested for extradition. Therefore, the offenses are extraditable between Thailand and the United States of America.

On 9th April 2008, the accused was rearrested under the Arrest Warrant No. 893/2551, and on the same day, the prosecutor submitted the petition to the Court requesting provisional detention. Then, the Court issued the order of provisional detention for a period of 2 months from the date of order during pending the official request for extradition and necessary evidence, according to the Black Criminal Case No. Kor.5/2551.

The Court is kindly requested to deliver judgment or order in accordance with the Act on Extradition, B.E. 2472, Section 3, 4, 6, 7, 8, 11, 12, 15, Extradition Treaty between the government of the Kingdom of Thailand and the government of the United States of America, and to detain the accused for extradition to be imprisoned according to the judgment of the U.S. Court.

The accused raised the objection that the case requested by the prosecutor for extradition and prosecution at the Court for the Southern District of New York, was of political or related to military nature. The prosecutor purposed to bring him for other charges than the requested ones. The

prosecutor's accusation was ambiguous without stating the date, time and place. There were no facts to make the accused understand the charges to defend the case efficiently. The necessary evidence and official request for extradition were not submitted within the period prescribed by Thai law, international agreement, Act on Extradition, B.E. 2472 and B.E. 2551, and agreement in accordance with the Extradition Treaty between the government of requesting country and the government of requested country. The accused did not have the names shown to the Court by the petitioner and did not commit any offense as charged. The accused never traveled to the United States of America or Colombia. If the accused was sent according to the request, it might affect the good international relations among related countries. The case was not extraditable for prosecution at the Court claimed by the petitioner because the requesting country and requested country did not have sovereignty over Colombia and other countries mentioned by the party to the treaty in the petition that it took place in those countries. The petition submitted by the prosecutor was not in compliance with the Act on Extradition, B.E. 2472, Section 11, because the inquiry/investigation was not conducted or the inquiry/investigation was not completed, therefore it was considered that the inquiry/investigation was not conducted which it was contrary to the provisions of Criminal Procedure Code, Section 120. The arrest of the accused at Room No. 1420, Sofitel Hotel, was not lawful because the arrest conducted in the private premise required the arrest warrant and search warrant, but in the arrest of the accused, there was only the arrest warrant without the search warrant. The requesting country and Russian Federation were the antagonists in terms of administrative-political policies and both countries desired to have Thailand as its satellite country so that the other party would lose the leadership. As charged, the prosecutor claimed that the U.S. officer(s)

was(ere) the U.S. representative(s) who was(ere) in contact with the accused to purchase the weapons from the accused or his representative(s), consequently, the United States was in the position of the principal, not the injured party by law who had the power to make a petition against the accused. The United States never declared that the Russian Federation or Russian citizen was a terrorist or its supporter. All charges took place outside the United States, therefore, the United States had no power to take the proceedings against the accused. The accused requested that the petition should be rejected and the accused should be liberated.

The Criminal Court delivered the judgment stating that the petition submitted by the prosecutor be rejected and the accused be released at the end of 72 hours after reading the order of release, except within such period, the public prosecutor shall notify the intention of appeal to the Court, and then the accused shall be detained during the appeal.

2. On 13th August 2009, the prosecutor submitted the petition notifying the intention to appeal the order of the Criminal Court and would appeal within the period prescribed by law.

3. The prosecutor submitted the appeal to the Appeal Court and objected the order of the Criminal Court for the release of accused on the following reasons :

3.1 For the issue/point whether the offenses committed by the accused were the offenses under the laws in both States or not.

In this issue/point, the Criminal Court ruled that the offenses for conspiracy to kill other people, conspiracy to kill the officers and employees of the U.S. government are equivalent to the offenses in accordance with the

Criminal Law, Section 288, 289 and 83, and such offenses are not punishable by Thai Court to the offender who commits the offense against the foreigner outside Thailand, and in this case, it shall not be considered as an offense punishable in the Kingdom of Thailand pursuant to the Criminal Law, Section 7 and 8, because the offender shall be punished in Thailand only if the law in Thailand prescribes that it is an offense and the punishment is determined. Furthermore, the offender committed the offenses against the provisions of the Criminal Law, Section 2, while the Section 7 and 8 do not give the power to the Court to judge and punish the offense committed by a foreigner against a foreigner outside the kingdom of Thailand; Thai Court can deliver judgment to a foreigner who commits the offense where a Thai person or Thai government is an aggrieved party, whether or not the offense is committed in the kingdom of Thailand or outside the Thailand. The accused who is a foreigner of Russian nationality, consequently, cannot be punished pursuant to the provisions of the Criminal Law by Thai Court. In accordance with the Extradition Treaty between the government of the Kingdom of Thailand and the government of the United States of America 1) Obligation to extradite……..2) For extraditable offense committed outside the territory of the requesting state, the requested state shall extradite a person under the provisions of this Treaty if it is punishable under his own law in the similar situation. Although it is the offense under the laws of Thailand and the United States, such offense is not punishable under Thai law, and in consideration of the Act on Extradition, B.E. 2472, Section 3 - This Act shall be applicable to all

extradition proceedings in Siam so far as it is not inconsistent with the terms of any Treaty, Convention or Agreement with a foreign State, or any Royal Proclamation issued in connection therewith; Section 4 - The Royal Siamese Government may, at its discretion, surrender to Foreign States with which no extradition treaties exist, persons accused or convicted of crimes committed within the jurisdiction of such States, provided that by the laws of Siam, such crimes are punishable with imprisonment of not less than one year. Furthermore, the Act on Extradition, B.E. 2551, Article 1, General Extradition Principles, Section 7 - An extraditable offense shall be criminal and punishable under the laws of Requesting State and Thailand by death penalty, imprisonment, deprivation of liberty, or other detention forms for a period of more than one year, to an offense of the same Article or same offense in both states. Therefore, according to the objective of the Extradition Treaty between the government of the Kingdom of Thailand and the government of the United States of America 1) Obligation to extradite……..2) For extraditable offense committed outside the territory of the requesting state, the requested state shall extradite a person under the provisions of this Treaty if it is punishable under his own law in the similar situation. That means it must be punishable by the laws of contracting parties in both countries. In this case, Thailand has no power of punishment.

Without disrespect to the Criminal Court, the prosecutor disagrees with the above judgment of the Criminal Court. The prosecutor would like to

inform that it is not the issue/point to consider whether the Court of the requested country has jurisdiction over the case in a foreign country or not and it cannot be used as a denial for extradition. The Act on Extradition, B.E. 2472, and the Act on Extradition, B.E. 2551, do not stipulate the provisions about the jurisdiction of Thai Court.

In this respect, the offense of terrorism and terrorism support pursuant to the provisions of Section 7 of the Criminal Law is under the jurisdiction of universal punishment. Furthermore, in each state, the jurisdiction principles in criminal law are based on the consistent principles according to the territorial principle, personal principle, state interest protective principle and universal punishment principle. Thus, a state might request the extradition for prosecution in his state if the criminal law of that state has jurisdiction over the case according to any of the above principles. On the other hand, Thailand can prosecute any alleged offender who injures Thai people in a foreign state, and if necessary, can request the foreign state to extradite the escaped offender for prosecution in Thai Court according to the personal principle. In addition, no code of laws stipulates that the requested state must have the power of prosecution and punishment on the offense stated in the extradition request, and the comparison between the charges and laws of the requested state is to see whether the same act is punishable under criminal law by deprivation of liberty for a period of one year or more in the similar situation or not.

Furthermore, the request for extradition is subject to the provisions

- “the offense is punishable by the laws of contracting parties in both countries by deprivation of liberty for a period of one year or more or by a more severe penalty (dual criminality)”. In comparison with the anti-terrorism and general criminal law of Thailand, all of the 4 charges from the United States are subject to the basic principle - the offense is punishable by the laws of contracting parties in both countries by deprivation of liberty for a period of one year or more by a more severe penalty (dual criminality). In the indictment of the United States, there are 4 counts which are conspiracy to kill the nationals of the United States, conspiracy to kill the officers and employees of the United States, conspiracy to acquire and use anti-aircraft missiles and conspiracy to provide material support or resources to a terrorist organization. The massacres, arms smuggling and terrorism are considered serious crimes under Thai law and are extraditable offenses as prescribed by the provisions of Section 288-294 of the Criminal Law (provisions of offenses against life and body) and Section 135/1-135/3 (provisions of offenses against terrorism and terrorism support) which are clearly separated offenses.

Mr. Satawut Kulawanit from the Ministry of Foreign Affairs testified that “When the Ministry of Foreign Affairs received the extradition request and found that if such offense is committed in Thailand, it shall be punishable by imprisonment for more than 1 year….which it is the violation of the provisions of the Criminal Law, Section 135/1 to 135/3, of Thailand.”

From the above reasons and points of law, it is shown that, according to the circumstances of this extradition case, the offense is punishable by the laws of Thailand and United States by imprisonment for more than 1 year which it is subject to the extradition conditions.

3.2 For the issue/point whether the offenses committed by the accused were the political offenses or not.

In this issue/point, the Criminal Court ruled that, based on the prosecutor's documentary evidence, it is credible that FARC is a group of patriots whose opinions of administration differ from the government and has fought against the Colombian Government for decades which it is a political fight. Consequently, when FARC had the political fight, the conspiracy is considered as the political support and it is the case of exception not to extradite the accused to the government of the United States.

Without disrespect to the Criminal Court, the prosecutor disagrees with the above judgment of the Criminal Court on the following reasons :

a. Without disrespect to the Criminal Court, the prosecutor is of the opinion that the political offenses should not be considered from the acts of terrorism pursuant to the provisions of the Criminal Law, Section 135/1, which the political fight shall be the political offense in all cases because such injury caused to life, body and freedom is intended to intimidate or compel the

government, foreign government or international organization. Furthermore, the offense against drug trafficking should not be political. In addition, Thailand and the United States have ratified the nine international anti-terrorism conventions which prescribe that the parties cannot address the political offense to deny the anti-terrorist cooperation. The provision of Section 9(3) of the Act on Extradition, B.E. 2551, also stipulates the principles on such issue.

Thus, the ruling made by the Court on page 40 stating that although the acts committed by FARC are violent and associated with drug trafficking, the offenses are political because it was not aiming at killing the civilians. It is incorrect because the acts committed by FARC resulting in the extradition request, drug trafficking and injury caused to life, body and freedom of persons and civilians are not related to any political aspects.

Besides, to state that the offenses committed by the person sought for extradition are political, the person sought must intend to commit the offenses because he has the hostility against the administration of the opposite party politically. Based on the facts, the accused is a Russian, not Colombian, and it is not found that the accused has the hostile intent against the Colombian government politically. The worldwide arms smuggling to various organizations shows that the accused wanted to sell the weapons for his business only. The acts committed by the accused are not considered to be the political offenses or for political objective.

b. The accused had no evidence and did not provide any evidence to the Criminal Court in order to prove how FARC has operated. The accused did not deny that FARC was not a terrorist organization or a political group. The accused testified in the Court that he was not related to FARC. He engaged in the business of air transport and construction. He entered into Thailand for holiday and had an appointment with Mr. Nawee of unknown last name for coordination. On the other side, based on the prosecutor's evidence in the course of trial proceeding at the Criminal Court, Mr. Robert Sahari Vazevit testified that FARC was the Colombian left-wing organization which has fought against the Colombian Government for decades in order to overthrow the democratically elected Government. FARC controlled cocaine areas in Colombia and sold 75% of all cocaine in the world. The income from cocaine trade was spent to support fighting operations against the Government of Colombia to protect its financial interests in the cocaine business. FARC engaged in terrorism acts such as kidnappings, bombings, massacres and other acts which were considered crimes. FARC has been designated by the U.S. Department of State as a terrorist organization for more than 10 years. FARC intended to commit crimes of kidnapping the United States nationals, committing against the United States nationals and murdering the United States nationals in Colombia, which were genuine criminal offenses. The prosecutor is

of the opinion that the political offense which is exempted from extradition for prosecution shall not be the criminal offense in general, because it will help the criminal to get away from liability incurred by violent acts such as bombings, kidnappings, drug trafficking and massacres, and then it is said to be related to the politics and it is the political offense which is exempted from extradition. The prosecutor disagrees with the ruling of the Criminal Court in this point.

Moreover, the Ministry of Foreign Affairs and the coordinator considered the offenses in the request and found that the offenses are violent crimes which are not political and are not exempted from the extradition. In the course of trial proceeding at the Criminal Court, the authority from the public sector examined the violent acts committed by FARC which are related to the criminal offenses committed for its benefits/interests, and it is not a political group having the idea of changing the administration whatsoever.

c. Offenses stated in the extradition request for prosecution in the United States are as follows :

- conspiracy to kill other people
- conspiracy to kill the officers and employees of the U.S. government

- conspiracy to acquire and use anti-aircraft missiles
- conspiracy to provide material support or resources to a foreign terrorist organization.

The prosecutor would like to inform to the honorable Court that the above 4 offenses are not political or related to the politics whatsoever, but the offenses are crimes committed by the accused to earn benefits/interests. Therefore, it shall be considered whether the offenses stated by the requesting state are the criminal offenses in the requesting state and requested state or not.

The Criminal Court ruled this issue/point on page 43 of the judgment that the conspiracy to kill other people, conspiracy to kill the officers and employees of the U.S. government are equivalent to the offenses in accordance with the Criminal Law, Section 288, 289 and 83, and such offenses are not punishable by Thai Court to the offender who commits the offense against the foreigner outside Thailand, and in this case, it shall not be considered as an offense punishable in the Kingdom of Thailand pursuant to the Criminal Law, Section 7 and 8, because the offender shall be punished in Thailand only if the law in Thailand prescribes that it is an offense and the punishment is determined. Furthermore, the offender committed the offenses against the provisions of the Criminal Law, Section 2, while the Section 7 and 8 do not give the power to the Court to judge and punish the offense committed by a foreigner against a foreigner outside the kingdom of Thailand; Thai Court can deliver judgment to a foreigner who commits the offense where a Thai person or Thai government is an aggrieved party, whether or not the offense is committed in the

kingdom of Thailand or outside the Thailand. The accused who is a foreigner of Russian nationality, consequently, cannot be punished pursuant to the provisions of the Criminal Law by Thai Court.

Without disrespect to the Criminal Court, the prosecutor disagrees because the legal proceeding in this case is for extradition pursuant to the Act on Extradition, B.E. 2472, and it is not a request for legal proceeding against the accused in Thailand, and it is not the point that the accused shall be under the jurisdiction of Thai Court, or the accused who is a foreigner shall be liable for such acts in Thailand.

d. To consider that FARC is a political organization has no supporting evidence.

The evidence presented in the course of inquiry for extradition case shows that the accused conspired to provide weapons to FARC, an organization intending to overthrow the democratically elected Government of Colombia by using violence. The Court accepted the plenty of evidence and stated that the alleged conspiracy is “to protect their drug-trafficking business by using violence such as bombings, massacres, kidnappings, killing U.S. nationals and attacking U.S. interests in order to dissuade the Unites States from continuing its efforts to disrupt cocaine manufacturing and distribution activities (Judgment, page 2-4, 42-43). Therefore, based on such acts, the Court accepted that the United States and European Union comprising of 27 countries officially designated FARC as a terrorist organization, including Canada (Judgment, page 46).

The important point is the accused never presents any evidence in order to deny the prosecutor's evidence for FARC's terrorist acts. The accused's witness from DUMA did not deny that FARC was not a terrorist organization (Testimony of Mr. Serge Evanov) and no supporting evidence is presented in the course of inquiry.

Therefore, when the Court ruled that "FARC spent the monies derived from committing offenses to support fighting operations against the Government of Colombia, not for its own wealth….[but] FARC had the ideology for right and freedom of their people …. FARC was not aiming at attacking the people or having malicious intention on the civilian in general…. it is not found that FARC was aiming at killing the United States civilians, or attacking the interests of the United States, or kidnapping the United States civilians who were businessmen, tourists, opponents in their fight against the Colombian government, soldiers, members of forces, volunteers, volunteer forces of the United States. Although some acts are violent, if the objective is to change the government in Colombia where the civil war or turmoil took place and it is committed by the residents in Colombia only, thus, it shall be considered as a political offense…. Based on such fact, whether or not FARC committed the violent acts, the objective was to change the politics, and

therefore it was a political offense, not an ordinary crime." (Judgment, page 39-41) and it was considered that "FARC is a group of patriots whose opinions of administration differ from the government and has fought against the Colombian Government for decades which it is a political fight. Consequently, the conspiracy is considered as the political support and it is the case of exception not to extradite the accused to the government of the United States." (Judgment, page 49), it should be incorrect and has no supporting evidence.

d. Testimony of the Ministry of Foreign Affairs

Mr. Weerachai Plasarai, the Director-General of Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, testified to confirm the testimony of Mr. Satawut as follows : "In the opinion of the Department of Treaties, the arms smuggling is not related to the politics and the offense against arms smuggling is not related to the military according to the meaning of the Treaty between Thailand and the United States." Mr. Weerachai is a knowledgeable expert for extradition proceedings and the testimony is a universal code of laws.

3.3 For the issue/point stating that FARC is not an organization designated by Thai government as a terrorist organization.

In this point, when the Criminal Court ruled that for the conspiracy

to acquire and use anti-aircraft missiles and conspiracy to provide material support or resources to a foreign terrorist organization, it was found that FARC has been designated by the U.S. Department of State, European countries and United Nations as a foreign terrorist organization, but Thai government has not declared or accepted that such organization is a foreign terrorist organization. In addition, Mr. Weerasak Futrakoon, the Permanent Secretary for Foreign Affairs of Thailand, and Mr. Weerachai Palasri, the Director-General of Department of Treaties, Ministry of Foreign Affairs, who were inquired by the Court, did not accept that FARC has been recognized by Thailand as a foreign terrorist organization. Although the prosecutor was of the opinion that the acts committed by such organization were the terrorism pursuant to the provisions of the Criminal Law, Section 135/1 to 135/3, the provisions of the Criminal Law, Section 135/4, prescribes that where there is a United Nations Security Council resolution or an announcement prescribing that a group of persons have committed terrorist acts and Thai government has declared the certification of the resolution or announcement, then a person who is a member of that movement shall be punished with a term of imprisonment not exceeding 7 years and fine not exceeding 100,000 Baht. In this respect, when Thailand, represented by Thai government, has not declared the certification of the resolution or announcement, FARC is not a terrorist for the offense pursuant to the provisions of the Criminal Law.

Without disrespect to the Criminal Court, the prosecutor disagrees with the above ruling of the Criminal Court. In consideration of the acts

committed by FARC for killing the United States nationals, killing the officers and employees of the United States which endangered life, and using war weapons which damaged the properties of the Government of Colombia in order to threaten or compel the democratically elected Government of Colombia to cause serious damage, it is found that the operations of FARC had committed all constituents of the offenses stipulated in the Section 135/1 of the Criminal Law. Furthermore, in consideration of the acts committed by the accused independently and specifically without FARC, the acts committed by the accused are equivalent to the offenses pursuant to the provisions of the Criminal Law, Section 135/2 ; Section 135/4 independently separated from Section 135/1 – 135/3, which covers the terrorism and conspiracy ; and does not include the membership of the group of people according to the resolution or declaration. Moreover, the testimony of Mr. Satawut Kulawanit, the officer of the Ministry of Foreign Affairs, confirmed that it was unnecessary for Thailand to establish the specific case that FARC was a terrorist organization to make it consistent with the punishable offenses by the laws of contracting parties in both countries by deprivation of liberty for a period of one year or more or by a more severe penalty (dual criminality). He testified that “In principles, we do not have to agree with the opinion of the United States that an organization is a terrorist. What we do is to compare the charges in the extradition request with Thai law. In this case, the Ministry of Foreign Affairs compares it with Thai law and it is the violation of the Criminal Law. Therefore, it is considered that this case is under the provisions of extradition to the United States as stipulated by law.”

It can be seen that the offenses in the Section 135/1-4 are offenses separated by each section, and if all constituents of offenses are committed in any section, it shall be regarded as the offenses without considering the offenses in other sections. Therefore, the prosecutor is of the opinion that when the offenses committed by the accused are subject to all constituents of offenses in the Section 135/2 and 3, it is unnecessary to consider whether the offenses committed by the accused are subject to the Section 135/4 of the Criminal Law or not.

4. The prosecutor's evidence is pertinent and complete pursuant to the Extradition Treaty and Thai law as follows:

The ruling of the Court of the First Instance stated that the prosector did not submit or present the sufficient evidence for extradition request which it is incorrect. The Court of the First Instance was of the opinion that the testimony of Mr. Robert Sahari Vazavit, a special agent who is the head of investigation in this case from the DEA (U.S. Drug Enforcement Administration) and is the "United States Officer", according to the Court of the First Instance, "he testified without any documentary evidence containing photographs or materials." (Judgment, page 49), but based on the facts, the supporting evidence submitted by the prosecutor for extradition request is complete pursuant to the requirements of Thai law and Extradition Treaty because the Extradition Treaty between Thailand and the United States stipulates that the extradition request shall be supported by "such evidence as, according to the law of the Requested State, would justify that person's arrest and committal for trial, including

evidence establishing that the person sought is the person to whom the warrant of arrest refers." (Section 9 (3) (b) of the Extradition Treaty between Thailand and the United States)

In this respect, the United States sent the formal request to the Ministry of Interior and the Ministry of Foreign Affairs for the provisional arrest of Mr. Victor Bout (Diplomatic Letter No. 0746, dated 29th February 2008). When Mr. Bout was arrested under the arrest warrant, the United States submitted the documents for extradition within a stipulated period which the documents were certified by the United States Secretary of State (Diplomatic Letter No. 1514, dated 1st May 2008). In order to defend the statement of Mr. Bout, the United States also submitted the additional information containing the plenty of evidence against Mr. Victor Bout (Diplomatic Letter No. 0740, dated 24th February 2009).

Pursuant to the provisions of Thai Law and Extradition Treaty between Thailand and the United States, those submitted evidence identified the accused from the description and photograph. The evidence also described the details of applicable criminal law and mentioned about the plenty of evidence showing that Mr. Bout is deserved to be prosecuted for those charges in details.

From the inquiry of extradition case, it is found that the request to extradite Mr. Victor Bout is in compliance with the Law and Extradition Treaty concerned. According to the testimony, dated 29th September 2008, Mr. Robert

Sahari Vazevit, the head of investigation in this case from the DEA (U.S. Drug Enforcement Administration) testified in details about the charges and evidence previously stated above. Mr. Robert also stated that the evidence contained more than 100 items acquired from the investigation in connection with Mr. Bout until that moment. Besides, the testimony of senior officers of the Ministry of Interior and Ministry of Foreign Affairs, shows that the contents of the documents and document submission methods are in compliance with the provisions of Law and Extradition Treaty, on 22nd September 2008. Mr. Satawut Kulawanit, the head in charge of criminal international cooperation, the Ministry of Foreign Affairs, testified that "The Ministry of Foreign Affairs found that such request was in compliance with the Treaty between Thailand and the United States, and such offense was punishable by imprisonment for more than 1 year under Thai law, and it was not of a military or political nature. The U.S. Court already issued the arrest warrant of the accused. The duration of prescription in law was not expired." Similarly, Mr. Chatchawan Chayabut, an officer of the International Affairs Division, Office of the Permanent Secretary for Interior, testified that "The extradition of the accused in this case is in compliance with the Act on Extradition, B.E. 2472."

Moreover, according to the ruling of the Court of the First Instance, Pol.Lt.Col. Pairin Jaemjamrat, a police officer of the Royal Thai Police, stated that he did not know about the documentary evidence for extradition case (Judgment, page 48), but Mr. Robert Zakkariasevich, the head of investigation in this case from the DEA (U.S. Drug Enforcement Administration), testified that

the tangible evidence in this case gathered from various worldwide sources was available in the United States (Judgment, page 13). Pol.Lt. Pairin Jaemjamrat, the police officer, also testified that another investigating officer from the DEA confirmed that the evidence in the extradition case was available in the United States (Judgment, page 48). Because the evidence was available outside Thailand, Pol.Lt. Pairin Jaemjamrat testified that he did not know about the documentary evidence for extradition case (Judgment, page 48), and Pol.Lt. Pairin Jaemjamrat did not testify that he did not know whether there was evidence for extradition case or not. Therefore, when the Court of the First Instance used the testimony of Pol.Lt. Pairin Jaemjamrat to support the judgment, it was impertinent to the facts.

In this respect, there are the plenty of evidence to support that the accused conspired to supply the large quantity of weapons. In consideration of the facts of the case, the Court of the First Instance doubted the ability of the accused to supply the large quantity of weapons to FARC as follows : "…the war weapons which has the large quantity and the price is too high to believe that it can be illegally traded. It is in doubt where to find the illegal source of large quantity of war weapons" (Judgment, page 48). The prosecutor is of the opinion that the evidence obtained from the investigation in this case shows that "The accused was the world's largest arms trafficker such as missiles, rifles….[and] The accused provided airplanes to transport goods and weapons to the ostracized places all over the world such as Afghanistan, South America, etc." (Judgment, page 11). Besides, the accused was ostracized by the United Nations according to various reports in connection with arms smuggling

(Judgment, page 12), which stated that Mr. Bout was a “businessman, dealer and transporter of arms and minerals, in contravention of UNSC resolution 1343 and he supported the former President Taylor’s regime in effort to destabilize Sierra Leone and gain illicit access to diamonds.”

Without disrespect to the order of the Criminal Court, the prosecutor is of the opinion that the acts committed by the accused are under the extraditable conditions pursuant to the Act on Extradition, B.E. 2472, and B.E. 2551, and the Extradition Treaty between the government of the kingdom of Thailand and the government of the United States of America, B.E. 2526, therefore, the prosecutor hereby requests the Appeal Court to detain the accused during the appeal and reverse the order of release granted by the Court of the First Instance and detain the accused for extradition to be prosecuted in the United States.

May the matter rest upon your judgment.

(Signed) Mr. Sanchai Krungkanchana Petitioner

This petition is prepared/typed by Mr. Sanchai Krungkanchana, the public prosecutor, International Affairs Department.

(Signed) Mr. Sanchai Krungkanchana Person preparing/
typing the petition

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Notes of the Appeal

I hereby submit the copy of appeal, of identical content, for 1 set, and I shall wait for the court order. The court order is accepted by me if I have failed for awaiting.

(Signed) Mr. Sanchai Krungkanchana Appellant

This appeal is prepared by me, Mr. Sanchai Krungkanchana, the Public Prosecutor, International Affairs Department, Office of the Attorney-General.

(Signed) Mr. Sanchai Krungkanchana Person preparing the appeal

This appeal is written or typed by me, Miss Lamiad Nontawat, Title : 3rd Class Typist.

(Signed) Miss Lamiad Nontawat Person writing or typing the appeal