

R (on the application of Pamuk) v Secretary of State for the Home Department

Before the Supreme Court

The Democratic Republic of Tazbekistan is a (fictional) central Asian country. Until 1990 Tazbekistan was a communist state, falling under the influence of the USSR. Since the end of the Cold War the state has embraced free market capitalism. Whilst the state is nominally a democratic one, serious questions have been raised about the quality of Tazbek democracy. The President of the Republic, who has been in power for twenty years, has curtailed the freedom of the press and political criticism, and international observers have repeatedly reported that Tazbek elections are seriously flawed. There are allegations that political opposition has been suppressed and in recent years political violence has been used by government opponents.

In January last year, after prolonged criticism and lobbying by international human rights NGOs, the Tazbek legislature passed the Abolition of Capital Punishment Act which abolished the (previously mandatory) death penalty for murder. The Act also provides that, instead of the death penalty, all convicted murderers will be sentenced by the trial judge to a mandatory term of life imprisonment. The government minister responsible for steering the bill through the Tazbek legislature expressly stated, during its passage, that for those guilty of committing the most serious of crimes 'life should mean life'. The only possibility of release is if the President of Tazbekistan exercises his prerogative of mercy, which has only ever been exercised on compassionate grounds, for example due to the extreme ill-health of the detainee.

Orhan Pamuk is a Tazbek citizen and opponent of the government. Last year a Tazbek government minister was assassinated and the Tazbek police suspect Orhan to have committed the crime. Orhan denies the allegations.

Orhan managed to avoid arrest, flee the country, and make his way to the United Kingdom. The Tazbek government now seeks his extradition.

If he is extradited Orhan will be put on trial for murder. Due to recent cuts in public expenditure legal aid for representation at trial is not available in Tazbekistan. Orhan does not have sufficient funds to pay for a lawyer, and will have to represent himself at trial. He has no legal training.

The United Kingdom Home Secretary has acceded to a request by the Tazbek government that Orhan be extradited to Tazbekistan. Orhan has challenged the extradition order on the basis that his return to Tazbekistan would lead to a violation of his human rights. Both the Divisional Court and the Court of Appeal have rejected his claim. He now appeals to the Supreme Court, opposing his extradition on the following grounds:

1. If he is extradited to Tazbekistan there is a real risk that he will be imprisoned without hope of release contrary to Article 3 of the European Convention on Human Rights (the right not to be tortured or subjected to inhuman or degrading treatment or punishment)

and

2. If he is extradited to Tazbekistan he will be subjected to a flagrant denial of justice in breach of his rights under Article 6 of the European Convention on Human Rights (the right to a fair trial).

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