Extradition to Russia from an EU Member State

Judicial Incompetence, Political Bias, or Just Another Sign of Rule of Law Decay?

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On 8 August 2022, a Bulgarian Regional Court, acting as a first instance, allowed the extradition of Alexey Alchin, a Russian national, to Russia upon the request of the Russian Prosecutor's Office. This controversial decision sparked much debate among Bulgarian civil society because Alchin became known for burning his Russian passport at a protest against the Russian invasion of Ukraine in February 2022 and for maintaining anti-war stances. In the eyes of Bulgarian civil society, the request for his extradition is politically motivated – some Bulgarian intellectuals sent an open letter to President Rumen Radev asking him to grant Alchin political asylum while social activists organized a protest in Alchin's support in downtown Sofia, the capital of Bulgaria.

Whereas the decision by the Varna Regional Court is not final and subject to appeal, it merits unpacking because of its implications. The Chair of the Bulgaria Helsinki Committee, Krassimir Kanev, has already deemed that the court has shown 'intolerable bias' and an interest in 'pleasing' the Russian government. However, one may also ponder if the decision does not reveal a much deeper problem within Bulgaria's justice system. On the one hand, one may suspect Russian meddling behind the scenes because of Bulgaria's Prosecutor's Office unhealthy relationship with Russia's Prosecutor's Office. On the other hand, the cherry-picking of applicable provisions, in which the court has engaged, serves as yet another red flag about the deplorable state of Bulgaria's rule of law.

Strange Coincidences

Before delving into the questionable Decision 167 of 8 August 2022 by a three-member panel of the Varna Regional Court (link unavailable due to their messy website), a summary of facts, as they emerge from the decision and public statements by Alchin's supporters, seems fit.

Alchin's extradition is sought by Russia's Prosecutor's Office in relation to pre-trial proceedings initiated in January 2018 regarding alleged tax crimes committed in the period October-December 2015. Russia's Prosecutor's Office has informed Bulgarian authorities that it pressed charges and issued an arrest warrant against Alchin in April 2021. It invokes both Article 12(2) of the European Convention on Extradition (ECE) and Article 9(3) of Bulgaria's Law on Extradition and the European Arrest Warrant (LEEAW) in its request to Bulgarian authorities.

While Alchin has been living in Bulgaria at least since 2017, Russia's Prosecutor's Office remembered to seek his extradition from Bulgaria only in mid-2022, a few months after he became famous for burning his Russian passport and for being critical of Russian policies. Even further, Alchin claims he was unaware of the charges against him before his extradition was sought from Bulgaria. This, of course, raises concerns that the charges against him may have been fabricated after he became known for burning his Russian documents. The charges could be seen as an attempt to silence him and teach a tough lesson to other Russians considering criticizing Russian policies in public – in other countries.

Bulgaria - a Country with Severe Rule of Law Deficiencies and Russian Ties

For years, I have been raising awareness of the severe rule of law backsliding in Bulgaria which worsened after Boyko Borissov rose to power in 2009 (see, for instance, here, here, and here). Bulgaria's justice system is dominated by the Prosecutor's Office which is modelled after the Soviet *prokuratura* and is

completely vertical in structure. In other words, all key decisions depend on one person – the General Prosecutor of Bulgaria. This model was introduced to Bulgaria in 1947.

In recent years, Bulgaria's Prosecutor's Office has developed peculiarly strong ties with Russia's Prosecutor's Office. Only in 2017, then General Prosecutor of Bulgaria Sotir Tsatsarov met with then Russian General Prosecutor Yuri Chaika twice in an official capacity. In Borissov's presence, both signed a cooperation agreement envisaging training Bulgarian prosecutors at the prosecutorial academy in Moscow and exchanging best practices with Russia's prosecution. It is certainly striking that the prosecution of an EU member state is committed to learning best practice from a prosecution known for human rights abuses. It is also interesting that Bulgarian media established that current General Prosecutor Ivan Geshev, whose resignation Bulgarians have been demanding for more than two years, participated in these exchanges, but subsequently tried to hide the extent of his involvement.

This background seems relevant because in the case of Alchin, the district prosecutor in the case completely sided with Russia's prosecution and argued in favor of Alchin's extradition. In view of the structure and dependencies within Bulgaria's Prosecutor's Office as well as the ties between the Bulgarian and the Russian prosecutorial authorities, the stance of the Bulgarian prosecution does not seem accidental.

In this light, as visible from documents leaked in the media, when Bulgaria's Ministry of Justice received the extradition request, it informed the Prosecutor's Office of the conclusions of the French Presidency of the Council of the EU to be vigilant about cooperation requests in criminal matters from Russia and Belarus. The Prosecutor's Office seems to have completely disregarded this facet. One should clarify that the LEEAW is severely skewed in favor of Bulgaria's controversial, but omnipotent Prosecutor's Office and bestows an array of powers in extradition proceedings upon it.

A Court Decision Raising Concerns

Decision 167 of 8 August 2022 by the Varna Regional Court itself may be criticized for the following reasons:

The Judges Seem Unaware of the Applicable Law

Objectively, there are several pieces of legislation as well as international conventions which are applicable to Alchin's case. The main ones are the LEEAW and the ECE. However, Bulgaria's Constitution and the European Convention on Human Rights (ECHR) are also relevant. The positive prerequisites for extradition are traditionally formalistic and easy for the requesting state to fulfill. The devil is thus hidden in the proper examination of the negative prerequisites, which can be found in the LEEAW, the ECE as well as other relevant legislation.

While Bulgarian judges frequently ignore the Constitution and display a lack of awareness of Council of Europe Conventions and ECtHR case law, including judgments against Bulgaria, it is striking that they have completely ignored the ECE and have based their legal reasoning in this case entirely on the LEEAW. Article 5(4) of the Bulgarian Constitution explicitly states:

> *'International treaties which have been ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be part of the legislation of the State. They shall have primacy over any conflicting provision of the domestic legislation.'*

This means that in case of contradiction between the LEEAW and the ECE, Alchin should benefit from the more favorable interpretation in the ECE. The ECE contains a provision which does not have a precise equivalent in the LEEAW. Namely, Article 3(2) from the section dedicated to 'Political Offenses' in the ECE contains a straight-forward exception which seems directly applicable to Alchin's case – extradition may be denied

> *'if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the*

> *purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.'*

Considering the conjunction 'or' in the provision, it is necessary to either show that the charges have been pressed to prosecute Alchin for his political stances or that his political stances may prejudice his criminal prosecution – one may argue that both of these limbs could apply here, knowing how critics of Vladimir Putin and the war in Ukraine are treated in Russia.

Furthermore, a number of provisions in Bulgaria's Constitution enshrine directly and indirectly the right to a fair trial and a prohibition of inhumane treatment. Coupled with Bulgaria's obligations under the ECHR, extradition to Russia can surely be denied on the grounds of reasonable doubts that a fair trial would not be possible or that the person would be subjected to inhumane treatment. Considering various reports on the deplorable state of Russia's rule of law, including the Rule of Law Index, Russia's ECtHR record, the reports on Russia by the Council of Europe's CPT Committee, etc., this seems obvious to bystanders, but not to the Bulgarian court. Here it is important to note that according to the Chair of the Bulgaria Helsinki Committee, the Varna court refused to hear expert evidence on the human rights situation in Russia, which is surely a serious omission biasing the proceedings.

Questionable Legal Reasoning

Beyond ignoring the ECE, the Constitution, the ECHR, etc., the Varna Regional Court engaged in rather questionable fact-finding and interpretation of Article 7 of the LEEAW which stipulates the political prerequisites for refusing extradition.

In its decision, the Varna court held that the crimes for which Alchin is sought do not constitute political crimes according to the LEEAW. Even more scandalously, the court concluded: 'The nature of the crimes *precludes* the possibility that the extradition is sought for the purpose of prosecuting or punishing a person on the grounds of race, religion, nationality, ethnicity, nor there is data indicating that Alchin will be subjected to violence, torture or cruel inhuman and degrading punishment by the requesting state' (emphasis added). The court further held since the proceedings against Alchin had started before the war in Ukraine, 'all sorts of claims that he is persecuted because of his anti-war activities are unfounded'.

On the day of rendering its decision, the Varna Regional Court published a press release, which is interesting because it contains information that is not in the decision itself. It appears from it that the court has credited the declaration of the Russian Prosecutor's Office that Alchin is not being prosecuted for political reasons, that he would face a fair trial and that he would not be subjected to torture at face value.

In view of the above, it seems that

1. The Varna court has violated the right to a fair trial and the principle of equality of arms in criminal proceedings – it has credited statements by the Russian Federation at face value while it has denied Alchin the opportunity to present evidence disputing these statements.
2. The Varna court conveniently ignores the fact that political persecution is often disguised as criminal proceedings. This is evidenced by ECtHR case law against Russia, such as *Navalnyy v Russia*. This is also evidenced by ECtHR case law against Bulgaria – namely, the famous *Kolevi v Bulgaria*.
3. The Varna court conveniently ignores that Russia's Prosecutor's Office, similarly to Bulgaria's Prosecutor's Office, has a history of fabricating charges, including charges based on falsified testimonies and documents (an example from Bulgaria is provided by the infamous "Peevski murder plot" invented by the Prosecutor's Office to frame innocent people; years later, the Prosecutor's Office was successfully sued for pressing unlawful charges). It transpires from the *Alchin* decision that the Varna court refused to initiate an independent check up of the authenticity of some of the documents submitted by Russia in the proceedings, too.
4. The Varna court may have ignored Article 3 of the ECE on purpose as Articles 7(1) and 7(4) of the LEEAW only envisage refusing extradition

for political crimes, not political persecution disguised as criminal proceedings – thus these provisions are easier to disregard if one engages in black letter rather than contextual reading.

Incompetence, Biases, or Lack of Independence of the Judiciary?

The background of the case as well as the suspect legal reasoning in the decision of the Varna court raise concerns about judicial incompetence and political biases. One may also argue that this is yet another case of judges' bowing to Bulgaria's controversial Prosecutor's Office acting merely as its rubber stamp. Neither explanation provides a comforting picture of the state of Bulgaria's rule of law. The ultimate question, of course, is what can be done in this concrete case to achieve a just outcome.

Relying on the conscience of the judges at the appeal level would be naïve – the decision of the appeal court will be final. Meanwhile, the options for justice are limited. The most urgent matter is for Alchin's defense to submit an application before the ECtHR along with a request for an interim measure under Rule 39 of ECtHR's Rules of Court. This is not without risks as there are cases of victims deported before the ECtHR has spoken on such matters.

President Radev can grant Alchin asylum pursuant to Article 98, point 10 of Bulgaria's Constitution. However, this does not automatically put an end to extradition proceedings: Article 6(2) of the LEEAW explicitly says that the existence of asylum is established at the moment the extradition request has been received. The court, however, can disregard the LEEAW in the name of Article 4(3) of the Law on Asylum and Refugees and especially the UN Convention on Refugees, which is a higher norm than the LEEAW according to Bulgarian law.

The LEEAW does not vest the power to refuse extradition in the Bulgarian government. Meanwhile, Article 26 of the LEEAW bestows the power to deport in cases of extradition upon the joint efforts of the Prosecutor's Office and Interpol's National Central Bureau (after a 2020 reform, this role is in the hands of the International Operational Co-operation Directorate, part of Bulgaria's Ministry of Interior) and its Article 20(4) obliges the Ministry of Justice to inform the requesting state of the outcome of extradition proceedings. This means that one may make the case that Bulgaria's government has the means to prevent deportation in the name of the Constitution, the ECHR, etc. via its Ministry of Interior and Ministry of Justice. Since this would be a rather bold political move, which would attract much criticism, the government's stance would be stronger if the President grants asylum and/or Alchin's defense lodges an application before the ECtHR.

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