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Russia Special Report: Russian convolution

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The vexed question of extradition between the UK and Russia (which has increasingly arisen in cases involving commercial and corporate issues) continues to engage the courts in this country and to stir controversy and debate.



There is a common perception that extradition between the two countries is not legally possible. This is only half true. Although the Russian constitution prohibits the extradition of its own citizens (which caused a diplomatic spat when the extradition of Andrei Lugovoi for his alleged role in the murder of Alexander Litvinenko was refused), the legal

framework for the extradition of persons from the UK to Russia has been in existence for more than a decade. Why, then, has only one of the 12 contested extradition requests made by Russia since 2000 proved successful in the UK courts? This was one of the questions addressed in a recent British-Russian Law Association (BRLA) seminar.

The reasons for the failure of Russia's extradition requests derive from the unique nature of extradition proceedings. Although extradition retains elements of criminal law (such as arrest and bail), an extradition hearing is not analogous to a criminal trial.

In an extradition hearing there is usually no opportunity for a defendant to test the strength of the allegations or to advance a defence to those allegations. There is no finding of guilt or innocence. Instead, the UK court follows a statutory procedure according to which it must decide whether certain conditions for extradition are

satisfied and whether any bars to extradition exist. It is these bars to extradition that have thwarted Russia's requests.

Defendants have successfully relied on the following bars:

- 1) Political motivation: this bar applies where the defendant can show that the extradition request was, in fact, made for the purpose of prosecuting or punishing him on account of his political opinions and/or that the defendant, if extradited, might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his political opinions.
- 2) Human rights: this bar applies where the defendant can show that, if extradited, his human rights would be violated, for example because of a real risk of torture or other cruel or inhuman treatment amounting to a violation of Article 3 of the European Convention on Human Rights (ECHR), or because he would suffer a flagrant denial of justice at his trial amounting to a violation of Article 6 of the ECHR.
- 3) Abuse of process: this bar applies where the defendant can show that the extradition request is an abuse of the process of

the UK court because it was made for an ulterior motive or improper purpose.

In Russian extradition cases there has been considerable interplay between these bars. For example, the fact that a defendant has the kind of political opinions that have caused his extradition to be sought will typically amplify the risk of his receiving an unfair trial, as well as casting doubt on the motives and propriety of those seeking his extradition. The application of one bar is, therefore, likely to trigger the application of another. But why have the UK courts found any of the bars to be applicable to Russian extradition cases?

The answer to this question stems from the particular profiles occupied by the defendants vis-à-vis the Russian State; the opinions held by or imputed to the defendants as a result of their profiles; and the extent to which these opinions are opposed to those of the State. The defendants' opinions need not be purely political to establish the bar of political motivation - the UK courts have interpreted the phrase 'political opinions' widely to include economic opinions.

The employees of Russian oil company Yukos, whose extradition was sought from the UK, were not overtly political figures, nor did they advocate political opinions in a conventional sense. However, they opposed themselves to the economic objectives of the State by refusing to support its policy of re-nationalisation of strategic industries, specifically the oil industry in which Yukos was pre-eminent. The UK courts held that, given this political and economic context, the criminal proceedings against the defendants originated in the Russian State's desire to neutralise their influence and/or to punish them for their disloyalty.

This political and economic context is fundamental to the question of human rights. The UK courts have recognised that fair trials happen in Russia and that there have been significant improvements in Russia's prison system. However, where a defendant's extradition has been sought on account of his perceived political or economic significance, the UK courts have acknowledged that this may give rise to a risk that the Russian criminal court would feel pressurised into delivering a verdict that is acceptable to the State. Unusually in extradition cases, the UK courts have refused to rely upon diplomatic assurances provided by Russia that the defendant's fair trial rights will be respected. This approach has been the subject of controversy and criticism.

Although the legal machinery is in place, the reality is that extradition traffic between the UK and Russia has been frozen for a considerable time. For this position to change the UK courts will need to be satisfied that the rule of law in Russia will be applied in criminal cases where the interests of the State appear to be engaged.

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