



Political asylum and Russian extradition requests

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As asylum lawyers with extensive experience of corporate raiding cases involving parallel extradition requests, our overriding view has always been that the best way to guarantee protection from persecution is to claim asylum. Putting aside their legal differences, asylum provides a right to travel internationally through a UN Travel Document, whereas merely defending an extradition request can leave an individual stranded in England. In addition, asylum provides our clients with an unparalleled opportunity to fully rehabilitate their reputation.

Despite these important points, on 9 December 2019 Westminster Magistrates Court handed down a judgment that undeniably improves the situation with regards to extradition for Russian nationals. In *Egorova and Others*, the Court held that extradition to the Russian Federation currently presents an unacceptably high risk of torture or ill-treatment, contrary to Article 3 of the European Convention of Human Rights.

Although allegations of torture in Russian prisons are far from novel, the important finding in this case was that it is now impossible to rely on assurances from the Russian authorities that they will protect individual prisoners from harm, because the authorities and monitoring bodies have themselves become root and branch corrupt.

Where before the Russian prisons' Public Monitoring Committees (PMCs) were directly elected and independent, their members have since been replaced by former military personnel, law enforcement representatives and *Siloviki* associates. In addition, their powers were curtailed by a July 2018 Act that prohibits private conversations with inmates and limits their access to penal institutions. The Commissioners for Human Rights that Russia proposed as an alternative are even more politicised, being directly subordinate to the federal prison service and engaged in 'cooperation agreements' with prosecutors.

Last week the English High Court approved the decision in *Egorova*, and the Russian Federation has since confirmed that they will not seek leave to appeal further. Is it safe to say that this sounds a death knell for Russian extradition requests for the foreseeable future? That depends on whether the Russian authorities can remedy the fundamental structural problems identified – but what can be said for certain is that this decision follows a growing number of cases involving Russian abuses in many spheres of relations with the West, and a wider disintegration of diplomatic relations that may take time to resolve.

In our view, the decision in *Egorova* is to be welcomed. As the Henry Jackson Society has argued, the Russian authorities have, for the past decade, "set about consciously misusing judicial mechanisms by stealth, pursuing perceived opponents around the world" – and whilst our judiciary must be encouraged to treat all sovereign states equally, they are right to closely scrutinise the inclination to lie and

misdirect of some in the Russian political elite.

Despite these positive signs, we remain cautious of advising clients that they are now safe from abusive Russian extradition requests. Previous cases indicate that regardless of *Egorova*, the Russian Federation will return with further requests, likely even for the same individuals. In this regard asylum is again a far superior form of protection, because it provides a permanent safeguard against removal.

Furthermore, whilst further Russian extradition requests *could* be refused out of hand, both the Magistrates and the High Court in *Egorova* were at pains to emphasise that the Russian Federation are free to return once their monitoring system is remedied. And although the problems appear to be structural and to demand root and branch reform, the writing also seemed to be on the wall for Russia after a series of negative decisions in 2012 and 2013.

If the Russian Federation does surmount the hurdle put down by *Egorova*, defending extradition becomes a hard task. The high threshold of Article 3 means it provides a relatively weak form of protection, regardless of the requesting state – as evidenced by the number of Russian extradition requests that have been granted over the years despite the wealth of evidence of mistreatment in Russian prisons.

In contrast, asylum utilises a more sophisticated and nuanced definition of persecution that fits more closely with the lived experiences of our clients. Asylum proceedings are also confidential in a way extradition proceedings are not. This confidentiality allows those who are fearful of persecution to deploy all of the evidence and witnesses in support of their case, where they may be reluctant to do so in open court with their persecutor and the press all in attendance. In addition, there is precedent case law to the effect that extradition should normally be adjourned until an asylum claim is determined, reducing the risk of having to deal with two substantive proceedings at once.

So, whilst it would be fair to say that *Egorova* marks a positive and potentially significant change in direction with regard to our judiciary's response to Russian abuses, we would advise anybody fearing an abusive extradition request not to rest on their laurels, and to take advice on the viability of claiming asylum right away.

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