



BEFORE

DISTRICT JUDGE (MC) EZZAT

IN THE WESTMINSTER MAGISTRATES' COURT

BULGARIA

V

STANISLAW CHUKOV

Hearing: 9 November 2020 & 20 January 2021
Judgment: 22 March 2021

Application

1. The court is dealing with a request by the Bulgarian Judicial Authority (**JA**) for the extradition of a Bulgarian national, Stanislav Chukov (07/03/1986) the requested person (**RP**), pursuant to a European Arrest Warrant (**EAW**) issued on 8 August 2019 and certified by the National Crime Agency (**NCA**) on 14 October 2019. It is a conviction warrant. There is an outstanding sentence to serve of 3 years 2 months imprisonment, less anytime that has been spent on remand in these proceedings.
2. The JA were represented by Mr. Allen.
3. The RP was represented by Miss Iveson.

Offences

4. There are 3 offences contained in the EAW. Details of the offences are set out in Box E of the EAW and the Further Information (**FI**).
5. Offence 1 – 22 to 24 March 2015 the RP is said to have unlawfully appropriated money from another. This conduct is said to have taken place in Bulgaria and in Greece.
6. Offence 2 – 11 May 2016 the RP is said to have been driving under the influence of alcohol in the Sofia District.
7. Offence 3 – 22/23 November 2013 the RP is said to have carried out a fraud.
8. The RP was not present for trial. The RP was not personally served with the summons in relation to offence 2. In relation to Offence 1 the RP was placed on ‘recognizance’ signing to confirm his obligations. On 18 May 2016 the RP left Bulgaria in breach of that recognizance. Thereafter the Bulgarian authorities were unaware of his location.
9. A total sentence of 3 years and 2 months was imposed with the sentence becoming final on 27 June 2019.
10. The RP raises a challenge in relation to offence 1 under section 10 of the Extradition Act 2003 (**EA**). This is dealt with later in this judgment.

Challenges

11. The challenges raised at the final hearing were:
 - a. **Section 2 and 10** The JA are put to proof that the warrant satisfies section 10 and 65.
 - b. **Section 17** – Breach of Specialty arrangements
 - c. **Section 21 /Article 3** - Degrading and Inhuman Treatment - Prison conditions.
 - d. **Section 21 /Article 8** - Disproportionate interference to the RP’s right to a family and private life.

Joined Cases

12. I have heard Mr. Chukov’s case together with another 3 cases involving Bulgarian requests for extradition. All cases raise the issue of specialty and prison conditions. The other cases are Sashev Mihaylov, Hristo Minchev and Venelin Velikov.
13. The findings that I have made in relation to Section 17 and Article 3 are findings that I make across all 4 cases. All other challenges to extradition raised by the requested people have been dealt with individually in their respective judgments.

Documents Considered

A bundle dealing with Section 17 and Article 3 consisting of 506 pages. An individual bundle of documents relating to the RP containing:

- EAW
- Further Information from the JA.
- Prison Assurance
- Opening note for the JA.
- Skeleton Argument for the RP.
- RP's Proof of Evidence

Evidence from the JA

14. This comes by way of the EAW and FI. The details of the offences and the history of the matters set out at the beginning of this judgment are taken from those documents.

Evidence for the RP

15. The RP adopted his proof of evidence as his evidence in chief. This should be read together with this judgment.

16. The RP gave additional oral evidence stating:

- a. That he received an 8 months suspended sentence for the offence in 2013.
- b. He accepted that he was aware of the other proceedings but that he had not signed anything that imposed obligations on him. The RP denied that he was aware or had agreed that he must ask permission or notify the Bulgarian authorities if he wanted to change address.
- c. The RP accepted that one of the reasons that he came to the U.K. at the time that he did was because he was scared of serving the prison sentence.

17. The RP called Mrs. Mandzhukova-Stoyanova to give evidence. For the past 15 years she has been a practicing lawyer in Bulgaria. She has a Masters degree from the Law Faculty of Sofia University. She gave evidence on the issue of specialty.

18. Mrs. Mandzhukova-Stoyanova adopted her report (18 August 2020) as her evidence in chief. She went on to give additional oral evidence. My summary and analysis of her evidence is set out below when I deal with section 17. I found Mrs. Mandzhukova-Stoyanova to be a fair and considered witness and while probed by Mr. Allen her evidence was not really challenged by the JA.

Section 2/10

19. There are 3 offences contained within the EAW.
20. Offence 1 – This is described as the unlawful appropriation of property. Miss Iveson raises two issues in relation to offence 1. Firstly, she argues that ‘unlawful appropriation’ which she presumes the JA say is akin to theft in the U.K., does not meet dual criminality. Secondly, that the conduct in offence 1 is said to have been committed in Bulgaria and in Greece.
21. Dealing first with ‘unlawful appropriation’. Miss Iveson submits that the description of the RP’s actions taken with the terminology used in the EAW is not enough to allow me to conclude that the offence of theft is made out. I accept and agree with this submission.
22. The dictionary definition of **unlawful** is ‘*not according to or acceptable to the law*’ the dictionary definition of **appropriation** is ‘*the act of taking something for your own use, usually without permission*’. Having considered these words separately and together, I am not able to conclude that the RP acted dishonestly or is alleged to have acted dishonestly. Dishonestly being a requisite element of the offence of theft in the U.K. There are insufficient details of the facts alleged within the EAW that could allow me to conclude that the RP acted or is alleged to have acted dishonestly.
23. It is accepted by both parties that some of the conduct complained of in offence 1 took place in Greece. The conduct that took place in Greece would not amount to an extra-territorial offence. The events that took place in Bulgaria and then in Greece are not a continuous course of conduct. They are separate incidents brought under the header of ‘offence 1’. The conduct in Greece is not an extradition offence. I have made the same finding in relation to the conduct in Bulgaria.
24. Offences 2 and 3 are both said to have taken place in Bulgaria. Offence 2 is an offence of Driving over the Prescribed Limit. Offence 3 is the equivalent of Fraud by False Representations.
25. Offence 1 is not an extradition offence and I therefore order the RP’s discharge in relation to it.
26. Offences 2 and 3 are extradition offences.

Section 17

27. The issue of specialty has been raised by the 4 RP’s. It is submitted that it is more likely than not that appropriate specialty arrangements are not in place in Bulgaria. The RP’s called Mrs. Mandzhukova-Stoyanova to give expert evidence.

28. She gave evidence of numerous accounts where specialty had not been respected by the Bulgarian authorities. However, when pressed she concluded that the Bulgarian authorities do have the means by which to apply the principle of specialty. That the authorities and 'defence lawyers' are not particularly familiar with the concept, but once it is properly raised and explained, proper procedures are put in place and the principle of specialty is respected.
29. In essence Mrs. Mandzhukova-Stoyanova gave evidence that if the RP's were alive to the principle of specialty and they raised it with the Bulgarian courts that it would be respected. Therefore, there is no risk of specialty not ultimately being respected, as if it is raised, the Bulgarian authorities have demonstrated a willingness to abide by it. I am confident that these 4 RP's will be able to do so, having sat through the evidence of Mrs. Mandzhukova-Stoyanova and being familiar with the principle.
30. The conclusions of Mrs. Mandzhukova-Stoyanova's evidence are set out in paragraph 6.5 of her report
31. *"As a conclusion and in answer to the main question, I would summarise that the case law of the courts shows consecutive observance of the specialty principle, however whether it will be raised on a case at all depends on the chance and/or the knowledge of the defendant and /or his lawyer of both the law and the relevant circumstances"*
32. Mrs. Mandzhukova-Stoyanova's exchange with Mr. Allen in cross examination further underlines the point:
- Q - So the cases in your table, is the upshot of those cases that there has been an error where specialty has not been properly dealt with but has then been corrected by reference to a more senior court?*
- A. Yes.*
- Q. Would I be correct in saying, your complaint is the mechanics of how it is dealt with and the knowledge that criminal lawyers have?*
- A. The problems in the first place is the prosecutors breaching the specialty principal. And then come the lack of defence lawyer's knowledge, which may restrict the defendant's ability to raise the objection. Sometimes the defendant may not have been aware that he was raised that he had previously been subject to an EAW.*
33. There is an acceptance by Mrs. Mandzhukova-Stoyanova that the principle of specialty does exist in Bulgaria but that often the State, the RP and the Lawyers are unaware of its proper use and application. Mrs. Mandzhukova-Stoyanova acknowledged that once raised it is dealt with appropriately. Therefore, the key is the RP's knowing their rights. Having sat through the evidence of Mrs. Mandzhukova-Stoyanova I am satisfied

that the RP's are familiar with specialty and will be able to raise it should it become necessary.

34. For the reason set out above the challenge on the ground of specialty fails.

Section 21 / Article 3

35. Assurances dated 29 and 30 October 2019 have been given by the JA as to the conditions in which the RP will be held should his extradition be ordered. The assurance sets out the conditions in which the RP will be kept in terms of space, occupancy of the prison, conditions and amenities. The assurance specifically addresses article 3 compliance. Having considered the specific terms of the assurance given to this specific RP, I am satisfied that were the assurance honoured, the RP would be kept in article 3 compliant conditions.

36. The cases of *Chechev and Vangelov v Bulgaria* [2021] EWHC 427 (Admin) dealt with the issue of Bulgarian prison assurances. Paragraphs 48 to 54 of that judgment deals with the reliability of Bulgarian assurances and concludes that they can be relied on. I adopt the findings of Lord Justice Singh in those cases.

37. Having done so, the challenge under article 3 must fail.

Section 21/ Article 8

38. *Polish Judicial Authorities and Adam Celinski and others* [2015] considers the approach that should be taken to article 8 at the extradition hearing. The general principles in relation to the application of article 8 in the context of extradition proceedings are set out in *Norris* and *HH*. The question raised under article 8 is whether the interference with private and family life of the person whose extradition is sought is outweighed by the public interest in extradition.

39. In reaching the decision I am required to carry out a balancing exercise weighing up the various factors of those in favour of extradition against those that may militate against it.

Factors in Favour of Extradition

40. There is a constant and weighty public interest in extradition that those convicted of crimes should serve their sentences. That public interest always carries great weight, but the weight varies according to the nature and seriousness of the crime involved. The offences for which the RP is sought are not the most serious in nature.

41. The UK should honour its international obligations and the UK should not become a safe haven for fugitives. The public interest in ensuring that extradition arrangements are honoured is very high. So too is the public interest in discouraging persons seeing the U.K. as a state willing to accept fugitives from justice.
42. "It is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe." [Lady Hale in HH.]
43. The RP has not been in the U.K. for a particularly long time, arriving in May 2016.
44. The RP has a limited private and family life in the U.K. Other than his partner, all his family continue to reside in Bulgaria. The RP is an economic migrant, he came to the U.K. to earn money. Based on the evidence put before me, his integration into British society is limited.
45. The RP accepts in his proof of evidence that he was aware that he was subject to a suspended sentence and that commission of further offences during the currency of the order would lead to activation of the sentence. The RP committed the drink driving offence during the suspended sentence but believed the offence was not serious enough to warrant the activation of the sentence. However, he accepted in his evidence that he left Bulgaria fearful of activation.

Factors Which May Militate Against Extradition

46. The RP has been in the U.K. since May 2016 and has established a life here for the past 5 years.
47. The offences for which the RP is sought are not the most serious in nature.
48. The RP has spent some considerable time on remand (since October 2019) in these extradition proceedings and therefore the sentence he is returning to serve will be reduced to reflect the time spent in prison in the U.K.
49. I have discharged the RP in relation to offence 1. The sentence that was imposed for offence 1 also incorporates the sentence that was imposed for offence 2. The total sentence was 2 years 6 months. The RP received an 8 months suspended sentence for offence 3 which was activated following the RP's conviction of offence 2.
50. The upshot of this is that the RP has spent 17 months on remand in relation to extradition proceedings. Arguably the more serious offending that made up the sentence of 2 years 6 months has now been removed because of my decision to discharge the RP for offence 1. It is therefore likely that the RP has served a significant part, if not all of any outstanding sentence.

51. . The RP has not committed any criminal offences while in the U.K.

52. The RP has established and maintained a relationship with his partner for the past 2 years.

Article 8 Decision

53. There will always be some impact on a person’s family and private life should extradition be ordered. This impact must be balanced against the seriousness of the offence and the length of sentence to be served. Given the time that the RP has spent on remand (17 months) and my discharge of the RP in relation to offence 1, I find that it would be disproportionate to order the RP’s extradition.

Decision

54. I am satisfied that this is a valid warrant. I find that it would be incompatible with the RP’s convention rights to order his extradition. I accordingly therefore order the discharge of Stanislaw Chukov, pursuant to section 21 (2) EA.

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District Judge Ezzat
22 March 2021.