

D E C I S I O N № 1031

City of Sofia, 21.10.2014

IN THE NAME OF THE PEOPLE

SOFIA CITY COURT, CRIMINAL DIVISION, committee XV, in a public session on the twenty first of October, in the year two thousand and fourteen, with panel:

CHAIRMAN: DESISLAV LYUBOMIROV

MEMBERS: NIKOLAY NIKOLOV

PHILIP SAVOV

and the participation of secretary R. Atanasova and the prosecutor, after reviewing the report by judge Nikolov CPC case № 3900 on the docket for 2014.

DECIDED:

DENIES the extradition requested by the General Prosecutor of the Russian Federation for delivering the Russian and French citizen Nikolay Vladimirovich Koblyakov, born on 26.02.1973 in the city of Ufa, Russian Federation, against whom is formed a criminal proceeding under criminal case № 201/460700-12 for a crime under article 159, section 4 of the Criminal Code of the Russian Federation.

The decision is subject to appeal in a 7 day term commencing on the present date before Sofia City Court.

CHAIRMAN:

/signed/

MEMBERS:

/signed/

The decision became
effective on 29.10.2014

Chairman: /signed/

Secretary: /signed/

/stamp/

Sofia City Court
Criminal Division

MOTIVES and DECISION under CPC № 3900/2014 of SCC, CD, committee 15

The proceeding is under article 16 and follows from the Law of Extradition and a European Order for Arrest (LEEOA).

Recorded is a letter № 87-167-2012/21.08.2014, deposited by the General Prosecutor of the Russian Federation, for delivering the Russian and French citizen Nikolay Vladimirovich Koblyakov, who is the defendant in a criminal case №201/460700-12 for a crime under article 159, section 4 of the Criminal Code of the Russian Federation.

In front of the Court the representative of the Sofia City Prosecutor's ("SCP") office does not support the request of the General Prosecutor of the Russian Federation for the extradition of the sought person Nikolay Vladimirovich Koblyakov. In the pleadings the representative of the state charge presents consideration that a basis for denying the extradition is present, as envisioned in article 7, sections 4 and 5 of LEEOA, referring to the reports of the non-government organizations "Human Rights Watch" and "Freedom House", as well as a report of the Committee for Human Rights of the General Committee of the United Nations dated 30.04.2014. The representative of SCP accepting that these are notorious facts, uses arguments for its reasons justifying the presence of conditions for denying the request of the Russian Federation for extradition of Koblyakov, exposing allegations that the judicial authority in the Russian Federation is dependent on the political authority, it has a low level of confidence among ordinary Russian citizens, who perceive it as corrupt.

Prosecutor Kirilov points out that since Mr. Koblyakov is a "political opponent of the President of Russia, Mr. Vladimir Putin", in case he is extradited, it is possible that he will be prosecuted by the political authority of the country, through the use of the judicial authority, and his right to a fair trial will not be guaranteed.

The defense for Mr. Nikolay Vladimirovich Koblyakov, attorney Kotsakova joins the statement of the representative of SCP, and additionally develops reasons that Koblyakov had no participation in the activities for which the Russian authorities formed a charge against him and for which his extradition is being sought. Presented are arguments that the criminal case against the requested person was formed on 09.11.2012, several months after the formation of the organization "Russie Liberte", which was registered at the address of Mr. Koblyakov in France. It is pointed out that the Russian investigative authority had information that Koblyakov, to the date of being accused was not residing on the territory of the Russian Federation, despite which he was sought on its territory, even though it was known to the investigators, that the sought person was located on the territory of the Republic of France, but his extradition was not requested by its authorities. Presented are statements that the documents with which he is announced for investigation in Interpol point out that Koblyakov is accused of fraud by abuse of trust, while the documents with which he is sought for extradition, the latter is accused of fraud by deceit. Attorney Kotsakova also relates considerations that the activities for which Koblyakov is accused for criminal prosecution and for which his extradition is being sought by the Russian authorities, are not criminal under the Bulgarian legislation.

The sought after person Nikolay Vladimirovich Koblyakov requests that the Bulgarian court deny the Russian Federation his extradition.

Sofia City Court, after discussing the arguments of the sides and taking into consideration the collected evidence for the case and the applicable laws, found the following:

The foreign citizen Nikolay Vladimirovich Koblyakov was born on 26.02.1973 in the city of Ufa, a citizen of the Russian Federation, as well as a French citizen, with

a college degree, no criminal record.

On 09.11.2012, with an order for raising of a criminal case of an investigator for particularly important cases of the First Investigative Department of the Management of Particularly Important Cases for crimes against the government authority in the area of economics under the Main Investigative Management of the Investigative Committee of the Russian Federation is formed with respect to Nikolay Vladimirovich Koblyakov and Tatyana Olegovna Eftimova, a criminal case №201/460700-12 for a crime under section 4 of article 159 of the Criminal Code of the Russian Federation, for that the latter, together with the person Habirov, acting as a group of people under previous concord, in the period 2004 – 26.09.2005 acquire through deceit ownership of foreign property – owned by the company “Stankoimport” a right to require payment of a liability of the company “Stanko-France S.A.” in the amount of 1 227 844 euro, which under the official exchange rate of the Central Bank of the Russian Federation on 26.09.2005 is equivalent to 42 363 319 rubles, in other words appropriation of a particularly large amount, with which they disposed of at their own discretion.

With decree dated 14.11.2012 for tracking down of a suspect, issued by an investigator of particularly important cases of the Main Investigative Management of the Investigative Committee of the Russian Federation, Nikolay Vladimirovich Koblyakov is declared for investigation under criminal case №201/460700-12 on 29.11.2012. With a decree for seeking in the capacity of a defendant it is ordered that Nikolay Vladimirovich Koblyakov be brought as a defendant under criminal case №201/460700-12, with the latter being presented with a charge for a committed crime under section 4 of article 159 of the Criminal Code of the Russian Federation (in the redacted Federal Law dated 07.03.2011 №26-F3).

On 01.02.2013 a judge from Regional Court of the City of Moscow takes with regard to Nikolay Vladimirovich Koblyakov a detention order “arrest under detention”.

Nikolay Vladimirovich Koblyakov is declared for search through the International organization of criminal police “Interpol” and for countrywide search in the Republic of Bulgaria through a red notice Control №A-2538/4-2014, published on 01.04.2014.

On 29.07.2014 at 18.00 hours at GCAP “Airport Sofia” upon entry in the Republic of Bulgaria Nikolay Vladimirovich Koblyakov is arrested. The Russian side is notified, and the same confirms its intention to seek extradition.

Within the terms under articles 12 and article 16 of the ECE (European Convention on Extradition) was received an official request by the General Prosecution of the Russian Federation for extradition of the person Nikolay Vladimirovich Koblyakov to the Russian Federation, to which are attached legal provisions, giving a basis for the charge against Nikolay Vladimirovich Koblyakov, as well as translations of the same in the Bulgarian language.

The request of the General Prosecution of the Russian Federation for delivering Nikolay Vladimirovich Koblyakov for arraignment for a crime under section 4 of article 159 of the Criminal Code of the Russian Federation (in the redacted Federal Law dated 07.03.2011 №26-F3) under criminal case №201/460700-12 is to be denied, and the considerations of the judicial panel are as follows:

In the course of the proceedings under the present case the defense of the sought person, attorney Kotsakova presents numerous written documents establishing the activity of Nikolay Vladimirovich Koblyakov in opposition of the political authorities of the Russian Federation.

In case 1, section 8 /provisionally marked by attorney Kotsakova/ are attached articles containing information clarifying the circumstance that on 10.12.2011 Koblyakov provided logistical support in the organization and conduct in Paris, France of a meeting for just elections in Russia and he personally participated in the same, with the goal of the participants in this meeting being to express their disapproval regarding

the results of the election from 04.12.2011 for the Russian Parliament.

From these articles it was established that Nikolay Koblyakov provided logistical support, promotion and participation in a meeting for fair elections in Russia, conducted on 24.12.2001 in Paris, France, as well as a meeting “white ribbons”, conducted on 26.02.2012 in front of the Russian consulate in France. The sought person is one of the founders of the association “Russie Liberte”, founded during 2012, a member of its advisory board and active member, and the latter was responsible for logistics, the organization and promotion of financial support of the conducted on 06.10.2012 in Montroy, France forum-concert “Russia to fight for freedom”.

In excerpt №1, attached to case 1, section 7, it is established that Koblyakov from 25.09.2012 to 28.09.2012 financially supported the association “Russie Liberte”.

Following this demonstrated position of Nikolay Koblyakov, in the period December 2011 to October 2012, against the political authorities of the Russian Federation, on 09.11.2012, against the latter is formed a criminal production by the authorities of the pleading country for a crime under section 4 of article 159 of the Criminal Code of the Russian Federation.

In a decree for authorization of a criminal case of an investigator for particularly important cases of the First Investigative Department of the Management of Particularly Important Cases for crimes against the government authority in the area of economics under the Main Investigative Management of the Investigative Committee of the Russian Federation and in a decree for the arraignment of Nikolay Koblyakov are presented factual assertions, describing the conducted, according to the investigating authority of the requesting country, publicly dangerous activity of the sought person.

These factual assertions according to the judicial panel are interpreted incorrectly by the investigating authority upon the formation of the conclusion for the participation of the sought after person in the criminal act under section 4 of article 159 of the Criminal Code of the Russian Federation, which pointed out in the procedural documents that Habirov, Koblyakov and Eftimova, acting as a group of persons under previous concord, in the period of December 2004 – 26.09.2005 acquire through deceit ownership of foreign property – owned by the company “Stankoimport” a right to require payment of a liability of the company “Stanko-France” in the amount of 1 227 844 euro, with the acquisition being of a particularly large amount.

From the extensive presentation of factual information in the decree for authorization of a criminal case and the decree for arraignment, it is not established that the sought person was a staff member, member of a governing or controlling board of the companies “Stankoimport” and “Stanko-France”, or to be connected or in any other way to be a participant in the activities of the latter companies, for which it is asserted to have received property belonging to the company “Stankoimport” – “NASA”, “Folton Ltd.”, “Wortex Ltd”.

Absent are factual assertions clarifying the personal acquisition by Koblyakov of property owned by the company “Stankoimport”.

Present is ambiguity with regard to the deceived person, which according to the charge of the Russian authorities is the director of “NASA”, Neils Cornelius Stolk.

The company “NASA” from the described in a decree for authorization of a criminal case and in a decree for arraignment factual situation is an assignee /article 99 from the Law for obligations and contracts/, to which is transferred from the assignor “Stankoimport” the right to seek payment of a liability of the company “Stanko-France” in the amount of 1 227 844 euro.

The criminal deceit according the Bulgarian penal code has two direct subjects – one of the subjects is a physical person, who has the executive or factual authority over the harmed property, who is being deceived, and the second is the harmed property.

In practice according to the factual construction of the charge, Stolk was deceived because the company he represents “NASA” receives the right to demand payment of a liability of the company “Stanko-France” to “Stankoimport” in the amount of 1 227 844 euro, and the judicial panel accepts that this action does not constitute deceit under Section IV, Article V of the Bulgarian penal code.

The relations which arise in connection with the issued by “NASA” to “Stankoimport” policy regard the ownership rights of its issuer and the bearer of the negotiable instrument, but not of the obligation of the company “Stanko-France” towards “Stankoimport”, about which is the charge.

Following an analysis of the circumstances clarifying the negative political position of Koblyakov with regard to the authorities in the Russian Federation; the formation of a criminal case against the latter, following his commencement of active political activities, for acts that took place over seven years prior; the unspecific charge, for which he is arraigned, the present judicial panel assessed that there is a real risk, in case the sought person is extradited to the Russian Federation, that his situation will be aggravated because of his political convictions.

The existence of a real risk in the Russian Federation that the situation of Nikolay Vladimirovich Koblyakov will be aggravated because of his political convictions gives basis for the judicial panel upon review of the provision of article 7, section 4 of LEEOA and article 3, section 2 of ECE to deny the requested by the General Prosecution of the Russian Federation extradition of the process-person.

In addition the judicial panel considers it necessary to point out that it does not share the statement of the representative of the state charge, that as a whole the Russian judicial system is not independent, referring to reports of the non-governments organizations “Human Rights Watch” and “Freedom House”, as well as a report of the Committee for Human Rights.

The circumstance that the procedure reports are published on the sites of the procedure organizations in the Internet does not make them into notorious facts, in other words, publicly known facts, which are not in need of proof. The reports may not be classified as qualified and judicially known facts, since they are not attached to the case and their content is not known to the judicial panel.

Independent of this, even if it is accepted that the procedure reports contain negative assessments of the judicial system in the Russian Federation, it is inadmissible for such an assessment to be absolutized to a degree that gives a basis for the lack of rule of law in the area of justice of a lawful country, such as the Russian Federation, as the latter is a member of the Council of Europe and of the United Nations and has signed and ratified the CDHRBF and ECE.

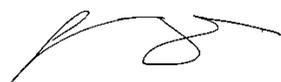
Proceeding from the above, the court issued its decision.

CHAIRMAN: /signed/

MEMBERS: 1. /signed/
2. /signed/

/stamp/
Sofia City Court
Criminal Division

TRUE WITH ORIGINAL
Secretary: /signed/



Translated by: Elitsa Lubomirova Healy