

HOME OFFICE EXTRADITION REVIEW

1. GENERALLY

Thank you for the opportunity to comment on the matters being considered by the Extradition Review. I have delayed this submission until I had the opportunity of considering the submission made by my former colleagues, the Extradition Judges at the City of Westminster Magistrates' Court. I do not dissent from any of the observations they have made although in some instances there may be a difference of emphasis.

I was first appointed by the Lord Chancellor to undertake Extradition work in 1998. I became Senior District Judge in 2003 until I retired from that post in September 2010. I have conducted cases until the 1989 Act and under Parts 1 and 2 of the 2003 act. Extradition Judges have only a very small part to play in the procedures or extradition into the United Kingdom under Part 3 of the Act and I do not feel competent to comment upon Part 3.

The Extradition Jurisdiction of the City of Westminster Magistrates' Court (formerly Bow Street Magistrates' Court)

This Court exercises the extradition jurisdiction for England and Wales. The increase in the volume and complexity of extradition cases has put considerable pressure on the Court. Consideration has been given to extending the jurisdiction to other court centres around the country but this has been largely rejected and it is my firm view that this work should be undertaken by Judges, Court Staff and Advocates who have specialist knowledge of this unique area of work.. This is achieved by having one centre developing a high degree of expertise from regular and frequent exposure to the work.

2. SECRETARY OF STATES' DISCRETION

Part of the objective of the 2003 Act was to try to remove what was seen as 'the political' influence of extradition. In Part 1 cases the Secretary of State has no involvement at all. In Part 2 cases the Secretary of State is obliged to consider the case under section 93 of the Act.

The extent of the Secretary of States' discretion would appear to be extremely limited. However, it appears that the Secretary of State does on occasion exercise his or her discretion on a considerably wider basis than section 93 envisages.

The Court is not involved in this process but where the Secretary of State requires more time to consider evidence and representations before exercising his or her discretion applications have to be made to the Magistrates' Court for extensions of time. Occasionally such applications have been considered I do not know of any application that has been refused. The issue of the extent of the Secretary of States' discretion is essentially a political matter but it becomes a relevant factor in the Court's desire to avoid delay.

3. OPERATION OF THE EUROPEAN ARREST WARRANT

Challenges to the Warrant

A considerable volume of jurisprudence now means that there are fewer challenges to the warrants themselves. The designated authority – Serious Organised Crime Authority (SOCA) - has the responsibility for certifying the warrants and I believe on a number of occasions returns warrants to the issuing judicial authority where SOCA feel that the warrant does not comply with the requirements of the English Courts. As the warrant is supposed to be directed from one judicial authority to another SOCA's intervention is sometimes criticised but it does nevertheless provide a useful method of maintaining the quality of the warrants and avoiding unnecessary challenges in court.

Arrests

These used to be conducted entirely by the Extradition Squad of the Metropolitan Police but recently provincial forces have been authorised to make arrests and to convey the defendants to the City of Westminster Magistrates' Court. Some difficulties have arisen which are entirely due to a lack of training in the procedures. This resulted in a number of defendants being discharged on the basis they had not been brought before the court as soon as practicable but this should be resolved by improved training.

Legal Aid

Almost all defendants appearing on their first hearing have access to lawyers or a duty solicitor. However, very considerable problems arise on subsequent hearings when defendants are frequently unrepresented because the legal aid procedures are so cumbersome particularly for defendants with limited knowledge of English who are remanded in custody.

Efforts have been made to try to overcome these difficulties and I have had meetings with the Legal Services Commission and have written to the Secretary of State for Justice. Unfortunately no solution has been found.

The issue is of considerable importance as we fail to comply with our international obligations both in terms of providing representation and in meeting the time limits. The expense to the tax payer of additional remands, very often in custody, is substantial.

Volume

The European Arrest Warrant has brought about very significant increase in the volume of work. It has now reached a point where additional resources will have to be provided by HMCS to meet the demands. Whilst I appreciate the financial constraints I am not satisfied that proper provision is being made.

Polish Extradition

The Review will be aware of the very large volume of extraditions to Poland. I have made representations to the Ministry of Justice and Euro Just to see whether the Polish authorities could consider reviewing their approach. Their constitutional principal that wherever proceedings are commenced they must proceed to a final outcome means that a large number of warrants are issued for trivial offences.

The United Kingdom Criminal Justice system is put to enormous expense in dealing with these cases which not infrequently result in the defendant paying a fine in Poland and returning to this country. I note my colleagues' suggestions that consideration should be given to providing a power to defer extradition in certain cases to enable the Polish proceedings to be compromised. I would support any step which would enable these minor offences to be dealt with inexpensively.

Issues Arising at the Extradition Hearing

Many of the points that were taken in this legislation have now been resolved by decisions of the High Court or the Supreme Court but a number of issues still arise.

The bar of the 'passage of time' is frequently raised and occasionally has some merit. The difficulty is in identifying submissions having merit, where issues of fact arise over the dates on which the proceedings came to the defendant's knowledge. Section 20 – whether the defendant was convicted in his absence and whether he had knowledge of the proceedings raises similar difficult issues of fact.

Human Rights

Whilst there is a presumption that signatories to the Human Rights Convention will comply with that Convention, issues are frequently raised and are difficult to resolve. Article 8 – the right to family life – has now been the subject of helpful High Court rulings and does not usually present difficulty but Article 5 and Article 6 and (occasionally) Article 2 present some real difficulties particularly in Part 2 countries. There have been frequent findings against the Russian Federation, there are two cases at Strasbourg alleging breaches by the United States of America and there have been findings against (amongst others), Greece and Rwanda. These issues are usually resolved only through the use of lengthy expert evidence.

The role of the Crown Prosecution Service

The extradition lawyers at the specialist office of the Crown Prosecution Service provide a first class, highly regarded, service. They act for the Government and the issuing Judicial Authority in applying for orders of extradition and they act in a solicitor and client relationship. This is based upon a ruling relating to the Director of Public Prosecutions prior to the creation of the Crown Prosecution Service. Whilst it is open to any Government or Judicial Authority to instruct solicitors of their own choice, the work of the CPS is conducted at a cost to the British tax payer. I believe that the CPS code of conduct particularly as it relates to 'public interest' does not apply and is effectively overridden by their duty to their client. If this were changed it might enable the CPS to withdraw cases that in the public interest did not need to be pursued or where (as in some Russian cases) the Government have failed to provide essential evidence.

Costs

At present the usual rules apply and, unless there was something exceptional, a discharged defendant (whilst not legally aided) would be entitled to an order for his costs from Central Funds. In extreme cases these can run into millions

of pounds. Any change in the arrangements would require changes to the framework decision and individual treaties but if an opportunity did arise perhaps consideration could be given to placing some financial burden upon the issuing Judicial Authority or country or giving some greater discretion to the Extradition Judge.

4. FORUM BAR TO EXTRADITION

Section 83A is a provision which causes me concern. I am conscious that a number of high profile cases has given rise to a public and Parliamentary support to bring this section into force. If this bar were raised extensive enquiries would need to be made causing inevitable and considerable delay. It could also give rise to injustice.

If the UK prosecuting authorities decide to prosecute no further steps will be taken in the defendant's extradition until such time as the case has been completed. If then it is established the conduct for which the defendant was prosecuted in the United Kingdom was the same as the conduct in the requesting state, a bar of double jeopardy would arise and the new Section 83A would not need to be invoked. If however the prosecuting authorities decide not to proceed the Extradition Judge would have to consider the totality of the evidence to decide whether a significant part occurred in the United Kingdom. He or she would then have to consider the admissibility of that evidence either in the UK or in the requesting territory. This would require a degree of expertise in the law of the requesting country. Consideration would also be have to given as to why the United Kingdom prosecuting authorities had decided not to proceed which may well be a question of the available evidence in this country. Examining the decision of the United Kingdom prosecuting authorities would mean that the Judge may be in danger of stepping into the arena.

I would suggest that these decisions are best taken by prosecutors. If Parliament's wish is that there should be no extradition where there is, or is to be, a prosecution in this country it might be more desirable for the UK prosecuting authority to provide a certificate to the effect that the evidence had been considered and that there will be no prosecution within the United Kingdom. Extradition could then proceed.

5. THE US - UK EXTRADITION TREATY

At the time of the introduction of the 2003 Act the treaty had been ratified by the United Kingdom but not ratified by the United States and there was clearly a lack of symmetry. The United Kingdom Government's negotiating strategy was inevitably weakened by unilateral ratification. However United States has since ratified the treaty and the 'lack of symmetry' now relates to the distinction between a 'prima facie case' and evidence of 'probable cause'. Whilst the media may consider this to be an important distinction in practice I think it would be hard to distinguish between the two. As there have been more unsuccessful extraditions to the United States than there have from the

United States to the United Kingdom I do not consider that this distinction is of importance.

6. PROVIDING A PRIMA FACIE CASE

The provision of evidence of a prima facie case was undoubtedly a safeguard. Statements from relevant witnesses is generally more accurate than a summary. However the European Union are unlikely to revert to that principle and to try to remove those countries who are not at present required to provide a prima facie case is likely to be politically and diplomatically unacceptable and the cost of translation could prove an insurmountable hurdle.

If there is any further information on which I can be of assistance please do not hesitate to contact me.

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