Home Office
Extradition Review Panel
Chair: Rt. Hon. Sir Scott Baker
c/o Head of Judicial Co-operation Unit
5th Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

23 December 2010

Dear Sirs

Representations for the Extradition Review Panel from GC100

I write, on behalf of GC100, in response to your invitation to submit representations to the Extradition Review Panel in connection with its review of the UK's extradition arrangements. We set out below our representations on each of the five issues identified by the Panel.

Introduction

GC100 is the association for the general counsel and company secretaries of companies in the FTSE 100. There are currently over 120 members of the group, representing some 80 companies.

The changes made to the UK's extradition regime by the 2003 Extradition Act and the 2003 US-UK Extradition Treaty were intended to improve the UK's contribution to the fight against worldwide crime and the US' war on terrorism. In addition, the changes also sought to address the UK Government's concern at the average time it was taking to extradite people from the UK. There has been widespread concern, however, that the changes have resulted in a system under which individuals can be extradited from the UK to other jurisdictions and subjected to foreign legal systems without appropriate protection from the UK Courts and there have been a number of controversial cases highlighting this issue. Although GC100 does not want to criticise any other legal justice system and does not want to defend, or make life easier for, criminals, we believe that UK business people should be able to have the case against them reviewed in the UK, in an English speaking court, subject to local law and under the local legal system, before they are extradited.

As you will see from the representations made below, one of GC100's key concerns is that, under the current system, UK business people suspected of white collar crimes can be extradited and subjected to the more aggressive US prosecution, and harsher criminal, regimes without any prima facie case against them being considered in the UK courts. In our view, the reinstatement of the prima face evidence test is required and would do much to remedy the concerns which have been raised.

We now address each of the five issues identified by the Panel.

The breadth of the Secretary of State's discretion in an extradition case

Before the 2003 Extradition Act came into force, an important ingredient in how long it was taking to achieve extraditions from the UK was, GC100 understands, repeated judicial review proceedings issued against the Secretary of State's exercise of his historic discretion as to whether or not to extradite individuals whom the Courts had decided were eligible for extradition. The removal of the Secretary of State's discretion in the new Act was, therefore, seen as an important step. What was put in its place was a requirement that the Secretary of State must order extradition unless he is prohibited from doing so by three very specific sets of circumstances.

GC100 believes that readdressing the breadth of the Secretary of State's discretion is a technical and complex issue and does not wish to make representations on this point. However, we do question whether the Secretary of State is better placed than the court to exercise a subjective discretion and whether allowing such discretion might result in lengthy judicial reviews once again. GC100 therefore submits that the reintroduction of the prima facie evidence test (discussed below) may be a better solution.

The operation of the European Arrest Warrant, including the way in which those of its safeguards which are optional have been transposed into UK law

Since the European Arrest Warrant was introduced into this country by the 2003 Extradition Act, there have been a number of high profile controversial cases involving minor offences, misidentification and other injustices. Jago Russel, chief executive of Fair Trials International said "Every day, three people are extradited under Europe's no-questions-asked extradition system and the cases of injustice are mounting". Although GC100 is not aware of any such cases involving business people, GC100 submits that the wide scope of the EAW and the evidence of how it is being used in practice is still a cause for general concern.

Again, GC100 believes that this issue may be addressed by the re-introduction of the prima facie evidence test.

Whether the forum bar to extradition should be commenced

Currently, a UK court cannot prevent extradition on the ground that the conduct which constituted the alleged crime took place while the requested person was in the UK. In 2006, amendments were made to the 2003 Extradition Act that would allow a UK court to stop extradition in these circumstances but these provisions have never been brought into force. David Blunkett, amongst others, has been quoted as supporting the adoption of such amendments.

GC100 does not wish to make detailed representations about the introduction of a forum bar. This is another technical issue. We do, however, doubt the practicality of introducing a bar in the context of the increased international trend towards "long arm" legislation (see, for example, the UK's new Bribery Act).

Whether the US-UK Extradition Treaty is unbalanced

To request an extradition from the UK, the US only has to demonstrate evidence of the commission of an extraditable offence and of the identity of the requested person. It does not have to show a prima facie case against the individual. On the other hand, if the UK wishes to request an extradition from the US, it has to show "such information as would provide a reasonable basis to believe that the person sought committed the offence". This is because the US Constitution prohibits extradition unless "probable cause" can be shown. In the case of Ian Norris, the High Court accepted a submission that the US-UK Extradition Treaty is unbalanced. This imbalance offends against one of the traditional principles behind extradition: that of reciprocity.

GC100 has previously expressed its concerns to the Government on this issue and would like to take this opportunity to reiterate them. We are very concerned that, by lowering the protections against extradition to the US, the 2003 Extradition Act exposes UK business people to the US criminal justice system in circumstances and in ways that they would not face in the UK, including the use of the US criminal justice system and criminal penalties to regulate business; the encouragement of companies to incriminate executives to mitigate the company's penalty; and the use of plea bargains to escape draconian penalties (especially lengthy prison sentences). The stark contrast between business regulation and enforcement in the UK and the US is clear. In the UK, there is little use of the criminal law to regulate business. In the US "prosecutor-led" system, there is common and aggressive use of the criminal law and process to prosecute alleged offenders. The harshness of the US system is highlighted in recent cases such as the mastermind of a boiler room operation who, in July 2010, received a 85 year prison sentence. A further example is the US Government's use of wiretaps (traditionally an investigative technique used against violent criminals) to identify insider trading.

One of the arguments justifying the new US-UK Extradition Treaty and the 2003 Extradition Act was that they were measures needed to fight terrorism effectively. Since then, however, there have only been a tiny number of terrorist extraditions from the UK to the US and many more business-related extraditions.

GC100 recognises the justified concern amongst UK business people that they lack proper protection from the UK Courts against what is seen as the excesses of US business regulation. Therefore, GC100 submit that this issue should be a key focus of the Extradition Review. We believe the answer lies in the reinstatement of the requirement for prima facie evidence.

Whether requesting states should be required to provide prima facie evidence

This was the test that was required of requesting States seeking extradition from the UK before the passing of the 2003 Extradition Act. It enables the UK Court to satisfy itself that there are reasonable grounds for believing that the requested individual has committed the alleged offence. In many cases, the application of this test would not change the outcome. However, it would provide UK defendants, faced with foreign government requests for their extradition, the protection that a UK court, speaking their language and applying a law, and operating a system of law, with which they were familiar, had decided that there was enough evidence to justify extraditing them to face charges in the foreign court.

GC100 strongly supports the reinstatement of the prima facie evidence standard and believes that such reinstatement would remedy most of the concerns regarding the UK's current extradition system.

GC100 would like to take this opportunity to thank you for the invitation to make representations. If the Panel has any questions or wishes to contact GC100, please do not hesitate to contact me on or Helen Mahy, general counsel and company secretary National Grid (contact details below) who sits on the GC100 executive committee.

Please note that the views expressed in this response do not necessarily reflect those of each and every individual member of the GC100 or their employing companies.

Yours faithfully

[redacted]

Mary Mullally

Secretary, GC100

CC: :Helen Mahy
Group Company Secretary and General Counsel
National Grid plc
1-3 Strand
London WC2N 5EH

(44) 207 004 3220