

Home Office Extradition Review 2010/11: Submissions by Babar Ahmad

SYNOPSIS:

This document contains submissions by Babar Ahmad to the Home Office Extradition Review Panel, appointed by the Home Secretary in September 2010. These submissions cover 4 of the 5 terms of reference of the review (all except the European Arrest Warrant). Babar Ahmad, born on 04 May 1974 is a British citizen who has been held in prison without trial since 05 August 2004 (6 ½ years) pursuant to an extradition request from the US under the Extradition Act 2003. No British citizen has been held in custody longer than him under the Extradition Act 2003. His case is currently before the ECtHR which is due to pass final judgement (Ahmad & Others v. UK, 24027/07) in the Spring of 2011. He is currently held at HM Prison Long Lartin.

CAUTION:

Due to the ongoing criminal prosecution of four police officers, it is essential that no part of this document relating to the December 2003 police operation is made public to avoid prejudicing the trial, which is currently scheduled for May 2011. This document is provided subject to this proviso.

SUBMISSIONS:

"Extradition is the process which allows countries to make formal requests to each other for the return of suspects to stand trial for a crime in the country it was committed... for bringing criminals to justice who flee overseas after committing a crime."

[Home Office Media Centre website, 07/09/10 and 08/11/10]

1. I, Babar Ahmad, was born in London on 04 May 1974. My father emigrated to the UK in 1963 and worked as a Foreign Office civil servant for 30 years, until his retirement. My mother is a retired science teacher. I am the second of four siblings. I went to a reputable private school in London and then obtained a Master's degree in Engineering from the University of London. I have lived in London all my life. At the time of my first arrest in 2003 I had been in full time employment at the IT department of Imperial College London for six years. I have never been charged or convicted of any criminal offence anywhere in the world.
2. On 02 December 2003 I was arrested in a pre-dawn raid at my home in south London by Metropolitan Police anti-terrorist officers. By the time I arrived at the police station I had sustained at least 73 physical injuries, which were photographed and documented. I had blood in my ears and urine in addition to extensive bruising all over my body.

3. At the police station I filed a formal complaint that, amongst other things, I had been physically, verbally, sexually and religiously abused by several anti-terrorist police officers, despite putting up no resistance. I complained that I was punched and kneed repeatedly, my bare feet were stamped upon and steel handcuffs were scraped along my bones. I was placed in the position Muslims pray in and taunted, "*Where is your God now?*" Twice in the police van an officer subjected me to headlocks that restricted my breathing to the point where I thought I was going to die.
4. I spent six days in custody during which my home and office were searched extensively and I was questioned about everyday items seized from my house. The police never told me what crime I was supposed to have committed. My fingerprints and DNA were sent around the world to check against international databases. On 08 December 2003 I was released without charge after the CPS advised the police that there was insufficient evidence to charge me with any criminal offence whatsoever.
5. After my release from custody I took two months off work to recover from my injuries. I spent the next few months trying to rebuild my life, whilst at the same time cooperating with the IPCC-supervised investigation into my complaint of maltreatment by the police during my arrest.
6. In July 2004, following eight months of investigation since my first arrest (during which I remained free), the police passed a file to the CPS to consider whether there was any

prospect of prosecuting me. The CPS again advised the police in July 2004 that there was insufficient evidence to charge me with any criminal offence arising from evidence seized in the December 2003 police raid.

7. At the same time in July 2004, the CPS also concluded that there was insufficient evidence to prosecute any police officer for the abuse on me during the December 2003 raid.
8. On 05 August 2004, weeks after both of these decisions by the CPS, I was arrested on my way home from work pursuant to an extradition request by the US under the terms of Part 2 of the Extradition Act 2003. I was taken into custody.
9. The next day, on 06 August 2004, I appeared at Bow Street Magistrates Court. The central US allegation made against me was that, from 1996-2002, I allegedly supported a series of websites providing news on Chechen insurgents in nearly 20 different languages. All of the evidence cited in US extradition documents was seized during the December 2003 police operation in London, regarding which the CPS had declared weeks earlier that there was insufficient evidence of any crime.
10. The US extradition documents also state clearly that "*at all times material*" to the allegations I was "*resident and living in the United Kingdom.*" The US claims jurisdiction because, for a period of 18 months in 2000/1, one of the several dozen

computer servers around the world hosting the websites happened to be located in the US. The US extradition documents clearly acknowledge that all of my alleged involvement with these sites (that closed in 2002) took place whilst I was in the UK.

11. I was refused bail at Bow Street on the basis that the allegations against me were true, even though I was not given any opportunity to comment on them. I was then taken to a high-security prison and detained as a Category A prisoner under the strictest possible conditions, where I remain to this day 6 ½ years later.

12. Throughout the main extradition hearings at Bow Street Magistrates Court the prosecutor described in detail all the evidence against me but under the terms of the Extradition Act 2003 my counsel, Edward Fitzgerald QC, had no opportunity to comment on any of this evidence, nor on any of the circumstances under which any of this evidence was seized. We could only make legal arguments on issues of human rights and technicalities.

13. On 17 May 2005, Senior District Judge Workman delivered his judgement at Bow Street, ruling against me on all points and sending my case to the Home Secretary. However, at the end he added: *"This is a troubling and difficult case. The defendant is a British Citizen who is alleged to have committed offences which, if the evidence were available, could have been prosecuted in this country."*

14. What neither SDJ Workman nor my legal team knew then, but has since become known, is that following my first arrest in December 2003, UK police had sent all the evidence seized in that operation (for which the CPS considered it was unable to charge me) to the US, which formed the basis of the extradition case against me.

15. In September 2005 my MP, Sadiq Khan, presented by hand a petition of nearly 20,000 signatures to Home Secretary Charles Clarke asking for my extradition to be stopped and for me to be put on trial in the UK if I had a case to answer.

16. On 15 November 2005, Home Secretary Charles Clarke ordered my extradition to the US having satisfied himself on the specialty and death penalty provisions given in the Extradition Act 2003, which are the only two points he is allowed to consider in the post-committal extradition process.

17. On 28 November 2005 SDJ Workman testified before the Parliamentary Home Affairs Select Committee, then chaired by John Denham MP, which was hearing evidence into the UK-US extradition arrangements. Judge Workman raised grave concerns triggered by my case, at how easy it was for a British citizen to be extradited to the US for alleged offences substantively committed in the UK.

18. In June 2006 a report was released providing evidence linking the current UK-US extradition policy to the radicalisation of British Muslims.

19. On 11 July 2006 I went to the High Court to appeal against my extradition.
20. On 12 July 2006, during an emergency debate at the House of Commons on UK-US extradition policy, several MPs mentioned my case as one in particular that was a cause of grave concern to their constituents.
21. On 30 November 2006, Lord Justice Laws and Mr Justice Walker dismissed my High Court appeal against extradition, later certifying two points of law.
22. On 04 June 2007 the House of Lords refused to hear these two points of law. I was given 7 days to attempt to ask The European Court of Human Rights to intervene. I packed my bags and kissed goodbye to my family during a last prison visit.
23. In a miraculous last minute intervention, the ECtHR granted me interim relief Rule 39, freezing my extradition until further notice whilst it considered my case (Ahmad & Others v. UK, 24027/07).
24. In July 2007 I lodged civil proceedings at the High Court in London against the Metropolitan Police regarding the abuse on me during my first arrest in December 2003.
25. In February 2008 The Sunday Times and other media outlets reported that anti-terrorist police had covertly recorded confidential prison visits with my MP, Sadiq Khan, who

had been helping me with regards my extradition case. The Justice Secretary Jack Straw announced an official inquiry into this affair in a statement to the House of Commons.

26. On 18 March 2009, in a highly unusual admission at the High Court in London, the Metropolitan Police admitted full liability for subjecting me to what was described as "*grave abuse tantamount to torture*" during my first arrest in December 2003. They offered payment to me £60,000 of damages to compensate me for the physical and psychological injuries that I had suffered. The news received worldwide coverage, in particular when it was revealed during the civil proceedings that a considerable amount of key evidence related to the December 2003 police operation had disappeared in mysterious circumstances and that several police officers had refused to testify.

27. On 26 March 2009, the Mayor of London and Chair of the Metropolitan Police Authority, Boris Johnson, announced an inquiry into my police abuse case with external judicial oversight by retired High Court judge Sir Geoffrey Grigson.

28. On 08 July 2010, nearly six years after my extradition arrest and three years since my extradition was frozen, the ECtHR declared my application partially admissible. The lengthy ECtHR admissibility decision expressed serious concerns about my potential detention in total solitary confinement in a Supermax prison and a sentence of life without parole (LWOP). The ECtHR chamber invited further observations from the United Kingdom Government into these two issues (Supermax and LWOP). It also

commented on the possibility of a domestic prosecution in the UK as an alternative to an extradition which could result in serious breaches of Article 3 ECHR. The ECtHR is expected to deliver final judgement in the case in Spring 2011.

29. On 12 August 2010, (following the successful civil proceedings described at paragraph 26 above) which had produced new evidence and the judicial inquiry ordered by the Metropolitan Police Authority, the Crown Prosecution Service in a remarkable development announced that four Metropolitan Police officers are to stand trial in relation to the abuse during my first arrest in December 2003. First Senior Treasury Counsel Jonathan Laidlaw QC is prosecuting the case, which is scheduled to begin in May 2011 at Southwark Crown Court. I am the chief prosecution witness.

30. My current position can thus be summarised as follows. I have already been in custody without trial for 6 ½ years. I am to be extradited to the US to face trial and a likely sentence of life without parole in total 'Supermax' solitary confinement. This is based upon evidence seized entirely in a police operation regarding which four UK police officers are to stand trial for abusing me, and regarding which the Crown Prosecution Service has declared several times that there is insufficient evidence to charge me with any criminal offence whatsoever. It has also been uncovered in judicial proceedings that a considerable amount of evidence related to that same police operation has disappeared on several occasions.

31. The US has clearly stated in extradition documents that "*at all times material*" to their allegations I was resident and living in the UK, but it claims jurisdiction because one of the several dozen computer servers around the world on which the websites hosted happened to be in the US for 18 months in 2000/1. It was therefore unsurprising when Senior District Judge Workman, the only judge thus far to have listened to the US case against me in its entirety, ruled at Bow Street Magistrates Court on 17 May 2005 that my case was "*troubling and difficult*" because "*it could have been prosecuted in the UK.*" (Whilst the US allegations against me carry a likely sentence of life without parole in solitary confinement, in the UK the same allegations carry a likely sentence of 6-10 years, of which half is served, in general prison population.)

32. In a recent development in case law, the Court of Appeal ruled on 29 January 2010 in Regina v. Sheppard and Whittle [2010] EWCA Crim 65 that the UK was the natural forum for a case in which two white supremacists ran a website in the UK, whose hosting server was located in California, USA. Lord Justice Scott Baker, the President of this panel now set up to conduct a general review of extradition law and practice was the presiding judge in that case. The Court ruled that the appropriate forum for prosecution was the UK since a "*substantial measure of the activities constituting the crime that took place in England*" and because the website was written, uploaded, maintained, edited and controlled from within England. (Paragraphs 20-23). The Sheppard and Whittle case is virtually indistinguishable from my case, in which a passive use of US computer servers is alleged, unlike the case of the alleged British computer hacker Gary

McKinnon, in which the US has alleged an active use of US computer servers to cause damage to US computer systems.

33. If the Home Secretary had powers to stop extradition in unique circumstances such as mine, rather than considering only the two issues of specialty and death penalty, she might well have done so.
34. Paragraph 64(2)(a) of the Extradition Act 2003, dealing with extradition between European nations, states that one can only be extradited where *"The conduct occurs in the Category 1 territory and no part of it occurs in the United Kingdom."* However, the section dealing with Category 2 territories such as the US carries no such exception, as stated in Paragraph 137 (2)(a) of the Extradition Act 2003: *"The conduct occurs in the Category 2 territory."* If Paragraph 137 (2)(a) of the Extradition Act 2003 contained the same exception clause as Paragraph 64(2)(a), then the US, like all European countries, would only have been able to seek my extradition if the substantial measure of the alleged offences took place there and *"no part of it"* occurred in the UK, notwithstanding the Cando Armas case law. This is the purpose of extradition, as stated on the Home Office Media Centre website on 07 September 2010: *"An independent panel will review the UK's legal arrangements for bringing criminals to justice who flee overseas after committing a crime."*

35. If the law gave powers to a British judge to stop extradition if he was satisfied that the UK was the natural forum for any trial, then Senior District Judge Workman could have stopped my extradition when he delivered his judgement on 17 May 2005.
36. If the US had to prove a prima-facie case before a British court whilst seeking my extradition, then again it could have failed given that the CPS had already declared on the same evidence that there was no case against me, prime-facie or other. The US extradition documents state that the websites I am allegedly linked to first went online in 1996, and closed permanently in June 2002. Therefore, since 1996 the US knew about these websites and that they were based in the UK. Yet it did not take action until August 2004, after the new UK-US Extradition Treaty came into force that does not require a prima-facie case when seeking extradition.
37. I have now been in custody as a maximum security Category A prisoner continuously for 6 ½ years, the equivalent of a 13 year sentence, without a prima-facie case established against me in the UK. I am the longest detained-without-charge British citizen in the modern history of the UK. I am not a foreign national, asylum seeker or refugee. Not even in 1970s Northern Ireland internment was anyone held continuously for 6 ½ years without being allowed to prove his innocence. Politicians and human rights groups raised uproar over 42 days detention without charge in police custody. Yet I have been held on exactly the same burden of proof a police officer needs to stop and search someone, i.e. reasonable suspicion, for 6 ½ years.

38. Tens of thousands of people in the UK of all faiths and races have supported my right to be put on trial in the UK. They include MPs and peers from all parties, as well as academics, journalists and celebrities. All of these people believe that they are serious miscarriages of justice taking place today due to the nature of the UK's current extradition laws. They believe that it is not sufficient to review future arrangements whilst allowing current cases to continue through an unfair system.

39. I would like to thank the panel for considering these submissions and I would welcome the opportunity to contribute further, either by video-link from prison or by meeting panel members in person.

40. Further details about my extradition case may be obtained from my solicitor, Ms Gareth Peirce of Birnberg Peirce & Partners, via her secretary, Elli Petrohilos, on elli@birnbergpeirce.co.uk or 0207-911-0166.

Babar Ahmad A9385AG

Detainee Unit

HM Prison Long Lartin

13 December 2010