

Cageprisoners Submission – Home Office Extradition Review

1. *The Home Secretary's powers to stop extradition*

The Home Secretary's power to stop extradition is, at present, quite inadequate for the purposes of protecting the right to fair trial and due process for UK citizens and residents.

The Home Secretary is under a strong obligation to stop any extradition if there is a chance that human rights may be breached. The question is then left, at what point are human rights breached for the purpose of any bar to extradition proceedings? For the UK government, the relevant law that must be adhered to is within the context of the Human Rights Act 1998 and the European Convention on Human Rights.

A primary concern relates to when inadmissible evidence is likely to be used, resulting in a breach of the right to a fair trial – however, the UK acts on the premise that the courts of the requesting state will not allow inadmissible evidence to have an impact on the outcome of a case and thus the admissibility of evidence is considered to be a matter for the courts of the requesting state to consider and not the UK courts.

In this the UK seeks to show that it has a degree of trust in requesting states not to violate the rights of its citizens/residents, but this is a very dangerous position to take and leaves a gaping hole for a persons' rights to be abused should this trust be misplaced. The foremost concern of the UK should be to protect the right to fair trial and other human rights of those whose extradition it allows, and not the perceived trust between it and another state.

Thus UK courts should have a duty to ensure that the evidence to be used against a person whose extradition is sought, is done so with initial bar of a *prima facie* case and that the evidence relied upon is admissible. The Home Secretary should in turn have a duty to stop any extradition where a *prima facie* case has not been established. Further, that any evidence submitted which does not meet the standards acceptable to the UK government, be rejected completely.

Where a *prima facie* case has been established, the Home Secretary should have a further discretionary power to stop extradition where it would be in the public interest to do so; or where, in that case, extradition would offend the public conscience.

The duty to stop the extradition if human rights will be breached should remain.

2. *The operation of the European Arrest Warrant (EAW), which deals with extradition requests between European countries*

Since 11th September 2001, many states have taken measures to speed the extradition process. Indeed, the EU states have adopted the European Arrest Warrant, which removes the requirement to ensure that the suspect will receive a fair trial and that there is *prima facie* evidence against that person. Those who defend the use of these warrants contend that all EU states are accountable to the European Convention on Human Rights, which upholds the individuals rights to a fair trial and

to freedom from torture or any other cruel or inhuman and degrading treatment. However, upon examination of the legislation and practice of some of these EU states, cause for concern arises.¹

In 1985, the UK signed an extradition treaty with Spain, mainly in order to arrest several high-profile criminals who had escaped from the UK to live on the southern coast of Spain. In November 2001, the UK and Spain signed a new extradition treaty that “fast tracks” the extradition process, replacing it with a single court hearing. “Fast-tracking” treaties between countries have become quite common since 9/11². Before 2001, Spain had only requested the extradition of five people from the UK.

Since 2001, human rights groups, non-governmental organisations, the UN, and detainees themselves have expressed concern over the Spanish police and government’s treatment of detainees suspected to have links to terrorist organisations³. Of particular concern are issues with Spanish legislative counter-terrorism measures, police ill-treatment of detainees and the effective impunity of these perpetrators, and the possibility of further extradition to countries with historical human rights abuses, thus subjecting them to a heightened probability of ill-treatment or torture.

Regarding the EAW, there is a no-questions-asked policy in place – something which needs to be abandoned in its entirety. The EAW has removed the requirement to ensure that the suspect will receive a fair trial in the requesting state and that there is evidence against the person.

It is suggested that there is no need to ensure these things along with rights, such as the freedom from torture or cruel, inhumane and degrading treatment, as European states are party to the European Convention on Human Rights and are obliged to uphold these rights regardless. As already explained, this is a dangerous position to take. Other states may make genuine mistakes or rather there may even be broader political reasons for suspects’ extradition. In any case, it is important for the UK to have safeguards in place ensuring that a person may only potentially be extradited where there is a case to answer.

Hedi Boudhiba

A refugee from Tunisia, Hedi Boudhiba was arrested in Liverpool in 2004 for allegedly supplying financial support to terrorist organisations in Germany. He was held in Belmarsh high-security prison in south London. Spain filed a European Arrest Warrant for his extradition although British, American, Portuguese, and German officials who interrogated him declined to prosecute.

His extradition was highly contested not only due to the sketchy evidence on which the European Arrest Warrant was based but also due to mental health issues – he was diagnosed with psychosis, and depression and attempted to commit suicide several times while in prison, even slashing his own throat and wrists.

Regardless of these concerns, Boudhiba was extradited to Spain after he lost his appeal at the High Court in April 2006. He spent two months in Soto de Real prison, where he was

¹ Susie Alegre, Executive Officer for Human Rights at Amnesty International, writes, “Like so many initiatives rushed through after Sept. 11, the European arrest warrant is an example of how there can be no security without human rights. Tragically, some EU governments have still not accepted that it is not the respect for human rights, but the breach of those rights, that undermines effective security and justice.” (*International Herald Tribune*, 02/02/04, http://www.ihf.com/articles/2004/02/02/edalegre_ed3.php, accessed 07/02/08)

² Although the bilateral fast-tracking extradition treaty between Spain and the UK was signed at the end of 2001, the European Commission adopted the European Arrest Warrant in February 2002, and all the member states of the European Union were required to adopt it by the beginning of 2004.

³ See for reference Human Rights Watch, “Setting an Example?: Counter-terrorism Measures in Spain,” January 2005 Vol. 17, No. 1(D)), and Amnesty International, “Adding Insult to Injury: The Effective Impunity of Police Officers in Cases of Torture and Other ill-treatment,” AI Index: EUR 41/006/007).

held in isolation; however, his health deteriorated so rapidly that he was moved to Aranjuez prison, where he was allowed a bit more freedom. In July 2007, he was cleared of charges by the Spanish National Court and released onto the streets of Madrid with no money, no passport, and nowhere to go.

He can now obtain temporary identification papers and receive donations. However, he awaits in fear the result of his case for asylum, dreading the possibility of returning to imminent danger and torture in Tunisia. He is very fearful of discussing his treatment while in prison for fear that it will damage his case for asylum.

Moutaz Almallah Dabas

Dabas was arrested in March 2005 in Slough after the Spanish government issued a European Arrest Warrant alleging that he had operated a flat in Madrid that had housed al-Qaeda recruits that had links with the 11-M bombings. His brother was also arrested in Madrid on similar charges.

Dabas appealed his extradition based on human rights abuses in Spain, including the limitations on access to counsel during incommunicado detention and potential ill-treatment and torture. His appeal was dismissed in May 2006, and his extradition process was final in February 2007. He was extradited to Spain on 3 March 2007.

Having been extradited to Spain, Dabas has left behind a wife and five children who still remain in the UK living in West London.

The rule of speciality in Extradition law requires that an individual may only be charged on the offences that are alleged in the extradition warrant and not others once the individual is extradited. Spain has on more than one occasion breached this rule as they have laid charges which were to be dismissed during the initial extradition. The cases of Inigo Castillo Macazaga and Farid Hilali illustrate this.

Inigo Castillo Macazaga

Macazaga was accused of involvement in an ETA bombing of a military barracks and a charge of attempted murder. He won both cases in the High Court here when it was shown that the Spanish government had falsified the evidence.

He returned voluntarily to face a far less serious public order charge only to have the Spanish prosecutor re-instate the charge that had been thrown out by the courts in the UK. He eventually won and is now finally free.

Farid Hilali

Moroccan national Farid Hilali was recently extradited to Spain under the terms of a European Arrest Warrant. The warrant made claims of Hilali's involvement with Barakat Yarkas (associated with the attacks of 11th September 2001); though this was based on telephone intercept evidence which had been proved inadmissible in a Spanish court. Nevertheless, the House of Lords ruled on the 8th February 2008, that Hilali be extradited to Spain.

Hilali has previously suffered torture both in the United Arab Emirates and Morocco, prior to being arrested in September of 2003 in the UK under the Terrorism Act. This was then followed by the issuing of the European arrest Warrant in April of 2004.

The warrant was issued on the part of the Spanish Authorities, claiming his responsibility in the conspiracy to murder in the attacks of 9/11. However, as mentioned, the only 'evidence' to prove this was telephone intercept evidence, said to be a conversation between Hilali and

Yarkas. In order for such evidence to be admissible in a Spanish court, the court must give authorisation prior to the interception, which was not the case with the telephone intercept evidence in question, thus making such evidence invalid in a Spanish court.

Since his detention, Hilali has had his personal property taken from him and has been placed incommunicado, having minimal contact with anyone.

Hilali has finally been granted bail in February 2009 after long legal challenges. He will still face investigation however has been granted liberty under bail conditions in the time being.

Spain is not the only country that has requested Muslim terror suspects from the UK through the process of extradition. The Italian and French governments have also sought to use the European Extradition Warrant in order to bypass the requirement of providing prima facie evidence.

Habib Ignaoua
Ali Chehidi
Muhammad Khemri

Ignaoua has been detained in HMP Belmarsh, contesting extradition to Italy, since June 2007. Habib fled Tunisia in 1994 after suffering detention and torture at the hands of the Tunisian security services. In the years since then he has been convicted at least three times in his absence by Tunisia's notorious military courts and sentenced to long terms of imprisonment.

Habib fled to the UK in 2004 where he made a claim for asylum on which there has been no decision. He was living peacefully with his wife and children in London and working in a launderette when he was suddenly arrested in June 2007 and detained on an extradition warrant from Italy. It alleges membership in a terrorist organisation in Milan. He was subjected to a second warrant in December 2007 on similar charges.

Chehidi and Khemri were arrested as part of co-ordinated raids in France, Portugal and Italy where 18 other men were detained. The Italian government claimed that the men were recruiting people to fight in Afghanistan and Iraq. The two men were arrested by Scotland Yard's extradition unit and proceedings for their extradition to Italy.

A large number of the Tunisians have also faced charges of a similar nature in Italy. Several, whether acquitted or convicted, have been deported by Italy to Tunisia, and once there subjected to detention and reportedly serious mistreatment and torture. This is the fate that the men quite rightly fear will await them.

Despite the wealth of evidence from multiple sources including lawyers and human rights organisations in Italy and Tunisia which confirm the situation as above, the district judge at the magistrates' court extradition hearing refused to accept that there was a risk that Italy would deport the three men on to Tunisia, and so ordered their extradition to Italy to proceed. The reasoning was all related to the need to respect and strengthen ties between European member states. Their lawyers lodged the appeal papers at the High Court where again he failed in his appeal.

Habib Ignaoua was extradited with his co-appellants to Italy on 2nd November 2008. He is being held in horrendous conditions and as a result has begun a hunger-strike. The conditions he has been subjected to include: solitary confinement with no heating during winter months, no drinking water for days, no access to telephone, and no recreation time permitted.

Some governments in the Arab world have developed complicity with their former colonial masters. As with Italy and Tunisia, the French have a close tie to Algeria, and thus have formed a special relationship in terms of detentions. Over the last few years, the French have successfully

made a number of extradition requests particularly in the case of Algerians, all of whom face return to their native Algeria.

Rachid Ramda

Like many other Algerians, Rachid Ramda fled the terrors of war and torture in his home country to seek asylum in the UK. However, he was arrested in 1995 on an extradition warrant from France, on allegations of connections with a series of bomb attacks in Paris. Ramda was not tried or given the chance to defend himself, yet spent the first six years of his detention in the Secure Special Unit of HMP Belmarsh, which impacted heavily on his physical and mental health.

Conditions in Belmarsh were worse than difficult - despite only possessing a few garments and inhabiting a bare cell of eight square metres, Ramda faced repeated degrading strip-searches during his long incarceration. He was almost completely starved of social contact, not being permitted a single visitor for more than eight years, much less an opportunity to prove his innocence. His own family in Algeria were refused a visa on 13 occasions when they attempted to visit their son.

After spending seven years in Belmarsh, the High Court in 2002 ruled against his extradition, on the grounds that the evidence provided by French authorities was unsatisfactory, and much of it had been extracted through the use of torture. Furthermore, British judges were concerned that Ramda would be subject to inhuman treatment were he to be returned to France.

After another three years and demands for justice by the British public still not met, a British judge overturned the previous ruling and reasoned that despite previous fears of poor treatment remaining, Ramda was to be extradited to France.

In March 2006, a French court found him guilty of providing logistical support to the GIA attacks on the Paris transport system. The trial was cut short after four sessions with Ramda's request for his lawyers not to defend him in protest of the "scandalous" proceedings. Further legal proceedings in October 2007 sentenced him to life for his alleged role in the tragedy, though Ramda still loudly protested his innocence.

France's high court of appeal, seemingly unsatisfied with the standards of the previous findings, in January 2008 ordered a retrial which will take place in October 2009.

Mustapha Labsi

An Algerian national who was living in London with his then-pregnant Slovakian wife, Mustapha Labsi was arrested in February 2001. He was detained in Belmarsh prison for three months for alleged links with a German terrorist cell, but these charges were dropped. However, before he could leave Belmarsh, he was re-arrested in connection with an extradition order from France. In December 2005, he was extradited to France and held in a prison that had been condemned as unfit for human habitation. He was denied contact with his family and faced abusive treatment.

In April 2006, he was released and travelled to Slovakia to see his family, where he applied for asylum. He was arrested and in August 2006 was transferred to Austria, where he was moved from prison to prison until he was deported back to Slovakia in May 2007. He has remained in detention ever since awaiting a decision on his fate.

He has been fighting extradition to Algeria, where in his absence he has been convicted and given a life sentence. There is no guarantee that Labsi will not face torture and ill-treatment at the hands of the Algerians.

Labsi is in considerable ill-health and, as result of his sufferings, has developed a bleeding ulcer that causes him to lose a litre and half of blood each week. Furthermore, Labsi's wife has suffered psychologically as a result of her husband's detention - her difficulties were exacerbated by her pregnancy at the time.

As soon as her son was born, she was evicted from her home without food or money to wander the streets. She was taken in by a Muslim family, but because of threats that they received from the police, they had to ask her to leave. She stayed with friends, but her health deteriorated so significantly that she could not take care of her child, who was taken from her. Labsi did not know his whereabouts for almost two years. Her mother was finally granted custody, and the child went to live with her in Slovakia. Labsi has been trying desperately to get in contact with her ever since.

Rabah Kadre

Rabah Kadre is 38 years old, and from Algeria. Kadre was arrested in London on 9 November 2002 and charged with offences under the Terrorism Act.

On 30 November 2002, a French judge issued an international arrest warrant against Kadre in connection with an investigation into the so-called Frankfurt group, which had planned to carry out an attack in the eastern French city of Strasbourg in December 2000. The charges were based upon extremely circumstantial evidence that would be unlikely to be accepted in a British Court. The allegations were namely that fingerprints were found at a flat in Germany, which they say are Kadre's, whilst another individual was arrested; intercept evidence; an assertion by an informant that he made statements "highly critical of France". Obviously, a formulated charge based on the evidence above would be vigorously defended in a British court. However, the British courts ruled that the court is "not concerned with proof of the facts."

He was held in Belmarsh prison for four years, awaiting extradition to France. Although he had been convicted of having a false passport he had not been charged with any terrorist offences in the UK.

On 16th December 2004, he was convicted, in his absence, by the Paris Criminal Court (Tribunal Correctional de Paris) of involvement in a plot to bomb the city of Strasbourg Christmas market. He was sentenced to six years imprisonment, followed by a permanent ban from French territory.

He was extradited to France in June 2006. Rabah did not seek a retrial after being advised by his lawyers that he would be held in prison longer than the existing sentence whilst awaiting a retrial.

He was released from Val de Reuil prison on 15th April and deported from France to Algeria on 15th April 2008. He was initially detained in Algiers but released after ten days on the 27th April. Rabah Kadre was released on Sunday 27th April and has now been reunited with his family.

3. Where a crime is mainly committed in the UK, whether the person should be tried here

This is a point drawing on the recent issues surrounding the cases of Gary McKinnon and Babar Ahmad. Where a crime is alleged to have been mainly committed in the UK, it makes no sense for the suspect to be extradited. To extradite such individuals would be to suggest that the UK laws are insufficient to try them.

The case of Babar Ahmad illustrates the great injustices that UK citizens face due to the current extradition laws. He was investigated for acts related to terrorism in the UK and it was found there

was insufficient evidence against him and the Crown Prosecution Service was not willing to bring this case to trial. US authorities then sought Babar Ahmad's extradition, for allegedly supporting a series of websites, relying on the very same insufficient evidence passed to them by UK authorities. The US extradition documents acknowledge that at all times material to the allegations Ahmad was resident and living in the UK, but claimed jurisdiction because one of the several servers hosting the websites happened to be located in the US. Because of this he has spent 6 and a half years imprisoned just fighting extradition.

There are further instances of where the UK authorities investigated the case and declined to prosecute only for the US government to then seek their extradition. In those cases, the suspected involvement in alleged crimes took place in the UK while another's alleged involvement also took place wholly in the UK with a suspected passive use of the US phone network. The natural forum for each of these cases must be the UK and not the US.

Where an alleged crime is mainly committed in the UK, the accused person should be tried in the UK; and where a person is capable of being tried in the UK, he should be investigated and, if appropriate, tried in the UK. Should the Crown Prosecution Service find that there is insufficient evidence to prosecute the person – or be unwilling to try the person – the UK should not be able to hand legal jurisdiction to another state. The purpose of extradition arrangements is to bring to justice criminals who flee overseas after committing a crime – not to take persons to another legal jurisdiction from the natural forum where all their involvement in alleged crimes took place – such a policy would constitute a form of administrative rendition.

4. *Whether the US-UK Extradition Treaty is unbalanced*

In 2003 the UK government fast-tracked the Extradition Act 2003 through Parliament. The Act was unprecedented in UK legal history due to the removal of a *prima facie* case in the UK before any extradition could take place. Further the US government does not have to provide any *prima facie* evidence to the UK government but show merely a list of allegations.

The legislation was fast-tracked as part of the arsenal of mechanisms given to the government in order to tackle terrorism. An unfortunate consequence of the Act was the extradition of the NatWest 3, a group of city bankers who became subject to the legislation. Fear among those working in the city of London that they could possibly become subject to US jurisdiction without a *prima facie* case led to a movement to criticise the government's policy on extradition. Despite recurring efforts from various sections of UK society, the extradition agreement remains as part of governmental efforts to stop terrorism.

There is no doubt that the US-UK Extradition Treaty is unbalanced, a fact admitted by former Home Secretary David Blunkett – the man who signed the Extradition Act 2003. To extradite an individual from the US, UK authorities must establish a *prima facie* case against the suspect; yet the US, to extradite an individual from the UK, need not provide any evidence, but merely show the UK government a list of allegations.

This imbalance is evident and against the interests of justice. The US must be obliged to submit evidence – the admissibility of which should be open to scrutiny – establishing a *prima facie* case to a British court for extradition to even be requested.

Syed Hashmi

A US citizen who was removed from the UK effectively for his criticism of the US government and its actions abroad. Hashmi received a Masters from London Metropolitan University in International Relations after which he was arrested on 6th June 2006 on an American indictment which claimed he was providing material support for Al Qaeda – he spent 11 months in Belmarsh prison before being extradited.

On his return to the US - Hashmi was placed in detention under the system of Special Administrative Measures (SAMs). The measures are extremely restrictive and prevent him from seeing his family except once a week, prevents them from passing on any messages to friends, he is not allowed any other contact except with prison officials and his lawyer, and he is kept in 23-hour lockdown. He is now facing a campaign of immense procedural difficulty in front of the US courts.

Babar Ahmad

On 2nd December 2003 Babar Ahmad was detained by the Metropolitan Police after a raid on his home which left him brutally assaulted with over fifty injuries to his person. Despite his treatment, he was soon released as the government had no evidence of wrong doing. In August 2004, Ahmad was re-arrested under an extradition warrant by the US due to allegations that he tried to solicit support for "acts of terrorism" in Chechnya and Afghanistan using a website based on US internet servers.

Despite the UK Crown Prosecution Service holding that he had not committed any crime, he has now been detained in the UK for the last four years fighting his extradition. Not being able to defend himself against the allegations that the US have produced against him, he now faces severe abuses of human rights and the very real threat of not being able to receive a fair trial.

Syed Talha Ahsan

Syed Talha Ahsan was arrested at his home in Tooting, South London, on 19 July 2007 by officers from Scotland Yard's extradition unit, under a provisional warrant alleging offences under the Extradition Treaty 2003.

27-year-old Talha had completed his undergraduate and postgraduate degrees from the School of Oriental and African Studies in Arabic. Amongst his peers, Talha was regarded as somewhat of a calm eccentric genius and even today allegations of him being connected to international terrorism lead those who knew him best to be perplexed. Maajid Nawaz, said of Talha "He was always a very gentle and polite man, who never spoke in anger or frustration. On one occasion, I remember him explicitly and passionately criticising those who use Islam to justify certain criminal activities."

Ahsan is accused in the same case as Babar Ahmad, a British computer specialist who was indicted in Connecticut in October 2004. He has been held on a federal indictment from the US state of Connecticut charging him with conspiracy to support terrorists and conspiracy to kill or injure people abroad. The allegations do not relate to domestic terrorism in the UK.

Haroon Rashid Aswat

Haroon Rashid Aswat is 34-years-old from Dewsbury, Yorkshire. He is a British citizen of Indian origins. He was arrested in Zambia, on July 20, 2005 at the request of the US. He was then deported from Zambia to the UK on 7 August 2005 and arrested on his arrival under the Extradition Treaty 2003.

Haroon has lost all appeals in the British Judicial system against his extradition to the US. His legal team have referred the case to the European Court of Human Rights who have requested that the extradition be placed on hold whilst they decide on the matter.

Almost three years of detention in the UK without trial or charge has had a devastating effect on Haroon's mental health. At one stage he stopped consuming food and drink and was transferred to Broadmoor Hospital, a high security psychiatric hospital at Crawthorne in Berkshire, England.

The above cases are all examples of the importance that cases be given the opportunity to be tried on merits at first instance. The human rights implications for Muslim suspected terrorists are indeed severe with the US being known for harsh conditions and disproportionate sentencing.

5. *Conditions in US prisons*

There has been detailed work conducted by the American Civil Liberties Union (ACLU) relating to prison conditions in the US, and the extent to which extradited men will be put through a system which can only be reasonably described as abusive once they are detained there. The ACLU have submitted a brief to the European Court of Human Rights in relation to their review of the extradition cases, and this should be borne in mind during the review of any laws or policies relating to extradition proceedings.