Home Office Extradition Review

Submissions
from
Islamic Human Rights Commission

30 December 2010

1. The Islamic Human Rights Commission (IHRC) makes the following submission to the Home Office in response to its request for submissions for the independent review of the UK's Extradition Arrangements.

2. IHRC has had a number of concerns with the UK's extradition arrangements for many years.

3. IHRC is deeply troubled by the actual reality of extradition cases involving the commission of crimes within the UK. The criminal justice system in the UK has for centuries been universally regarded as one of the fairest and transparent systems of justice in the world. Mechanisms to extradite those accused of committing crimes in the UK serve to undermine that noble reputation by suggesting the UK criminal justice system is not competent to bring criminals to justice.

4. Article 7(1) of the 1957 Convention on Extradition provides that an extradition request can be refused where the UK considers that the alleged offence was committed "in whole or in part in its territory or in a place treated as its territory." Similar provisions regarding "natural forum", included in the EU Framework

Decision on the European Arrest Warrant and many other extradition treaties, were not incorporated into the Extradition Act 2003. As a result, many cases are now before the courts whereby individuals are being extradited to the US whereby the bulk of the alleged offence was committed in the UK and is triable in the UK. Such individuals should be tried in the UK and not extradited to foreign jurisdictions to face justice.

5. This issue of natural forum was never advanced by the previous government. The former Security Minister Lord West wrote to Sadiq Khan MP in November 2007 in relation to the 'natural forum; amendment, confirming that Schedule 13 of the Police and Justice Act 2006 "contains 2 provisions which would, if commenced, amend the Extradition Act 2003 to provide a further ground on which the Courts may refuse extradition. This would require the Courts to consider whether extradition is barred on the basis that a significant part of the conduct in respect of which extradition is sought occurred in the UK and that it would not be in the interest of justice for the offence in question to be tried in the state requesting extradition." He pointed out that "this is called the 'forum' bar to extradition." This amendment was considered to be of significant importance by both parties of the Coalition government when in opposition. However, Lord West pointed out that the new power would not come into force unless and until the Home Secretary presented an order to Parliament. The previous Home Secretary failed to do so. IHRC urges the current Home Secretary to present such an order to Parliament.

Case Study: Babar Ahmad

6. IHRC is particularly concerned where the accused is also British, such as is the case with Babar Ahmad, a British citizen who has been imprisoned for six and a half years without trial while awaiting extradition to the US, over allegations of involvement with a family of websites which US prosecutors claim provided material support to insurgents in Chechnya and Afghanistan. Mr. Ahmad's case is

the most high profile extradition case within the Muslim community and one which IHRC has been actively involved with from the outset.

7. Mr. Ahmad's case was the first effective extradition request to be pursued by the US under the Extradition Treaty 2003.

8. The US prosecution case against Mr. Ahmad makes it very clear that any involvement alleged to have taken place by him in the circumstances underlying the accusations he faces, took place entirely in the UK. The US claim to jurisdiction in his case is that for a period of approximately 18 months from early 2000, one of the several dozen computer servers worldwide on which the websites were hosted, were located in the US.

9. However, the evidence upon which the prosecution is based regarding Mr. Ahmad's alleged specific involvement with the websites, is derived entirely from the UK and primarily from the search by the Metropolitan Police of his home on 2nd December 2003. Mr. Ahmad was released without charge after less than one week in custody after the CPS advised the police that there was insufficient evidence to charge him with any criminal offence.

10. In July 2004, following eight months of investigation, the police passed the file to the CPS to consider the prospects of prosecuting Mr. Ahmad. The CPS again concluded that there was insufficient evidence to charge him with any offence arising from the evidence seized in the December 2003 raid.

11. On 5 August 2004, weeks after the CPS decision, Mr. Ahmad was re-arrested on an extradition request from the US under the 2003 Act, following his indictment there on 28 July. All of the evidence cited in the US extradition documents was seized during the December 2003 police operation in London regarding which the CPS had declared just weeks earlier that there was insufficient evidence of any crime.

12. In ruling on Mr. Ahmad's case in January 2005, Senior District Judge Workman stated that "*This is a difficult and troubling case. The defendant is a British citizen who is alleged to have committed crimes which, if the evidence were available, could have been prosecuted in this country.*" Judge Workman raised these concerns again when giving evidence before the Parliamentary Home Affairs Committee in November 2005. Judge Workman raised grave concerns about how easy it was for a British citizen to be extradited to the UK for alleged offences substantively committed in the UK.

13. It was not known to either Judge Workman or Mr. Ahmad's legal team at that time but it transpired later that following the December 2003 raid, the British police had sent all the evidence seized in the operation (for which the CPS considered it unable to charge him) to the US, which formed the basis of the extradition case against him.

14. In July 2006, the then Attorney General Lord Goldsmith wrote to Mr. Ahmed's Member of Parliament indicating that one section (section 58) only of the Terrorism Act 2000 was considered by the CPS in his case and that it was concluded that there was insufficient evidence to provide a realistic prospect of conviction. Lord Goldsmith's letter proceeded to state that "the CPS decided that the other material they considered could not amount to an offence under section 58 because it was merely information useful when travelling to Afghanistan or about a particular person's movements, which could not be considered useful to a person committing or preparing an act of terrorism."

15. Nevertheless, the US prosecution case rests upon Mr. Ahmed's possession of identical items that form and continue to form the basis for prosecution of others in the UK.

16. Mr. Ahmed remains in prison today, over six and a half years later, fighting his extradition to the US for alleged involvement in offences which could be prosecuted in his own country.

Case Study: Syed Talha Ahsan

17. In a related development, on 19 July 2006, another British man, Syed Talha Ahsan was arrested by the British police under a US extradition request on the basis of his alleged involvement with Mr. Ahmad in relation to the same website. The extradition warrant was submitted only after Mr. Ahmad's case had been completed in the High Court in July 2006. The allegations against Mr. Ahsan arose from the same "evidence" claimed to have been seized from Mr. Ahmad's home in December 2003

18. By the time of Mr. Ahsan's extradition (March 2007), the UK and US had signed a Treaty (January 2007) to reflect an ability to consider 'natural forum'. A request was made to the CPS to prosecute Mr. Ahsan in the UK was that it was not appropriate to consider natural forum in his case as the extradition of his co-accused Mr. Ahmad had already been ordered, the case was being pursued by the US prosecutor, and there had been no independent investigation in the UK in relation to Mr. Ahsan.

19. Thus, although the actual concept of 'natural forum' had only been developed in parliamentary debate and made the subject of an important amendment to the Police and Justice Act 2006, the opportunity to consider the appropriate forum was not to be taken.

20. IHRC is concerned as to why it took over three and a half years for the US to submit their extradition request in relation to Mr. Ahsan and why no attempt was ever made to consider charging Mr. Ahsan in the UK for activities, which if there is evidence is available, are triable criminal offences in this country as well.

Case Study: Abid Naseer

21. The most recent example of the attempted extradition of an individual to the US whereby the crime is mainly committed in the UK is that of Abid Naseer, a Pakistani national who was studying in the UK prior to his arrest in April 2009 by the British authorities on suspicion of belonging to a global terrorist plot. Mr. Naseer was released without charge after less than two weeks but immediately arrested and detained under immigration powers on the basis that the Secretary of State had unilaterally decided that his presence in the UK was not conducive to the public good. Mr. Naseer fought his deportation in the Special Immigration Appeals Commission where he was unable to see or challenge the evidence against him. Mr. Naseer successfully won his appeal against deportation and was granted leave to remain in the UK.

22. On 7 July 2010, less than a month following his release, the US submitted a request for Mr. Naseer's extradition under the 2003 Act and he was re-arrested and detained. The US accuse Mr. Naseer of being an al-Qaeda operative who was involved in a plot to blow up targets in Manchester. The allegations include that he conducted reconnaissance at potential target locations in Manchester, transported reconnaissance photographs back and forth from Pakistan, purchased ingredients and components necessary for the preparation of explosive devices, and maintained frequent contact with the al-Qaeda leadership.

23. IHRC finds it astonishing that in a case where there is apparently evidence against Mr. Naseer in relation to the allegations that he took steps while in the UK, to carry out a terrorist attack against the British public in Britain, and it is an offence under British law to do that, that he is not being tried in a British court, but being extradited to another jurisdiction to face justice.

24. IHRC has received numerous concerns from members of the Muslim communities in the UK that the rule of law is completely overridden where the government has mere suspicion of an individual's involvement in terrorism. This concern is exemplified by the case of Abid Naseer whereby despite the British authorities having insufficient evidence to charge him with any one of the numerous terrorism offences on the statute books, he was nevertheless detained while the Secretary of State attempted to deport him to Pakistan in circumstances where he was unable to see or challenge the evidence against him. When that failed, he was re-arrested and imprisoned while he awaits extradition to the US in relation to the same allegations under a system whereby no evidence of his guilt needs to be proven in a British court. IHRC shares the concerns of many that such a system is effectively a mechanism of undermining the rule of law and destroying public faith in the British criminal justice system.

25. Recent caselaw has also suggested that the natural forum for cases where the bulk of the crime was committed in the UK, is the UK. A recent Court of Appeal case in January 2010, 'R v Sheppard and Whittle', involved the possession, publication and internet distribution of racially inflammatory material. Similar to the case against Babar Ahmad, the websites alleged to be operated and maintained by the Appellants were hosted by a remote server in the US. The Court of Appeal considered that the appropriate factors to take into account when considering whether prosecution in the UK was appropriate were that:

    a. Whether "a substantial measure of the activities constituting the crime take place in England."
    b. Whether the website in question was "operated and controlled" from within the UK "and was loaded maintained and controlled" from within the UK.
    c. Whether the material on the website was written and edited within the UK and collated and selected within the UK.

In applying the above factors, the Court of Appeal found that the UK was the appropriate forum for trial

26. IHRC is concerned that while the similarities between this case and that of Babar Ahmad and Syed Talha Ahsan are very obvious, in the case of Sheppard and Whittle, the UK was considered the natural forum whereas in that of Ahmad and Ahsan, these principles have not even been considered appropriate. Such a double standard of justice suggests that a dual track system of justice may be in operation whereby Muslims are treated less favourably than those of other faiths in the same circumstances.

27. IHRC believes that the integrity of the British courts ought to be respected and that where an offence is alleged to have been mainly committed in the UK, then any trial should take place in the UK. If there is insufficient evidence to prosecute an individual for an offence, the government should not be permitted to circumvent this by handing legal jurisdiction to another state. According to the Home Office website, 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 justice who flee overseas after committing a crime*'. This is clearly not the case with Mr. Ahmad, Mr. Ahsan and Mr, Naseer among others whose alleged crimes were committed not in the US, but in the UK, and who never fled from the US. All three have been unfairly prejudiced by the Extradition Treaty 2003.

28. One of the gravest concerns that IHRC has with the current extradition arrangements is that requesting states such as the US are not required to provide sufficient evidence to prove an allegation, ie a prima facie case. While international cooperation is an important aspect of any nation's foreign policy, this must not be used to justify the extradition of one's own citizens where no case can be established against them. While trust between allies is important, it is a two way process and the US ought to trust that the British criminal justice

system is more than capable of prosecuting individuals provided the evidence is available.

29. Had the US been required to establish a prima facie case against Mr. Ahmad and Mr. Ahsan, it is unlikely that any extradition request would be granted on the basis that the prosecution authorities in the UK have already concluded that there is insufficient evidence against either man to justify bringing a prosecution. Furthermore, the US extradition documents in those cases state that the websites the men are 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 but took no 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.

30. Likewise in the case of Abid Naseer, any attempt to establish a prima facie case would have to deal with the findings of the SIAC court which ruled against Mr. Naseer's deportation to Pakistan. Although in that case, Mr. Justice Mitting concluded on the basis of secret evidence that Mr. Naseer was an al-Qaeda operative, Mr. Mitting also admitted that there was a "complete absence of any evidence of the handling or preparation of explosives by Naseer and his alleged associates" and that "despite extensive searches of buildings associated with them, nothing has been found, apart from an irrelevant trace of RDX in one of the properties." US prosecutors would also have to overcome the fact that the British authorities concluded that there was insufficient evidence to charge Mr. Naseer with any offence. Under current arrangements, none of this will be considered.

Case Study: Lotfi Raissi

31. The dangers of such a system can be sensed from the miscarriage of justice afforded to Lotfi Raissi, an Algerian-born British resident who was arrested in the UK shortly after the 9-11 attacks and accused of being a key member of the terror plot. Mr. Raissi was initially arrested at his home 10 days after the attacks but

released without charge a week later. He was almost immediately re-arrested, this time under a US extradition request. Mr. Raissi was held in custody in HMP Belmarsh maximum security prison for almost five months.

32. The request for Mr. Raissi was brought under the old arrangements whereby the US had to establish a prima facie case against him before he could be extradited. Due to the lack of evidence against him that he was involved in the 9-11 attacks, the only charge he could be held on was lying on his pilot's license by not revealing that he had undergone knee surgery, and a charge for shoplifting dating back to 1993. British prosecutor Arvinda Sambir publicly announced that the FBI had discovered Mr. Raissi's name in a vehicle rented by one of the 9-11 hijackers, Salem al-Hazmi; that a raid on Mr. Raissi's home had turned up video evidence of him and another of the hijackers Hani Hanjour celebrating together on his computer; that further telephone records confirmed their suspicions that he had trained four of the hijackers in an effort to help support terrorism against US interests, that his pilot logbook was missing all data from March 2000-June 2001, and that a notebook said to belong to Abu Doha, a major terror suspect, that had been found in London, contained Mr. Raissi's phone number. The prosecution stated that they might seek the death penalty.

33. However once his extradition hearing began, they were unable to produce any such evidence. One by one, over the course of ten court hearings, Mr. Raissi's solicitor proved that the allegations and the evidence to support them were false, if not fabricated. The accurate flight log was produced the man in the video was shown to be Mr. Raissi's cousin, not one of the hijackers, and the address book was clearly shown not to have belonged to Abu Doha.

34. As a result, on 12 February 2002, Judge Timothy Workman released Mr. Raissi on bail, stating that there seemed to be no credibility to the US claims. He was formally released from charges on 21 April 2002. In February 2008, the Court of Appeal completely exonerated Mr. Raissi of all charges and condemned the

Metropolitan Police and the CPS for abusing the court process, presenting false allegations and not disclosing evidence. The three senior judges held that the US authorities' use of extradition proceedings – ensuring the co-operation of the CPS – became "a device to circumvent the rule of English law that a terrorist suspect could (at that time) be held without charge for only seven days". They further held that "It appears to us to be likely that the extradition proceedings were used for an ulterior purpose, namely to secure the appellant's detention in custody in order to allow time for the US authorities to provide evidence of a terrorist offence. . . We consider that the way in which extradition proceedings were conducted in this country, with opposition to bail based on allegations which appear unfounded in evidence, amounted to an abuse of process." On 23 April 2010, then Secretary of State for Justice Jack Straw announced that Mr. Raissi was eligible for up to £2 million compensation for his ordeal.

35. IHRC notes that had the current extradition arrangements been in place during Mr. Raissi's arrest, prosecutors would not have been required to establish a prima facie case and it is very likely that he would have been extradited, convicted and even executed in the post 9-11 hysteria. As a prima facie case was required to be established, Mr. Raissi's innocence quickly became apparent and his extradition was halted. There are no such safeguards in place in the current arrangements.

Case Study: Haroon Rashid Aswat

36. Another clear example of the dangers of such a system is the case of Haroon Rashid Aswat, a British citizen who was arrested in Zambia in July 2005 and questioned by US officials who wished to take him to the US. After the British authorities intervened to prevent such an extraordinary rendition, Mr. Aswat was deported back to the UK on a private jet. Upon arrival in the UK on 7 August 2005, Mr. Aswat was arrested on the airport tarmac under the Extradition Act 2003. The allegations against Mr. Aswat are that he helped set up a training camp in the US in 1999. However, the US did not seek his extradition until August

2005. Mr. Aswat was sectioned under the Mental Health Act in April 2008 and taken to Broadmoor Prison Hospital where he remains fighting his extradition. Had the US been required to make a prima facie case against Mr. Aswat, they would not have been likely to succeed as they waited six years after the alleged crime to consider prosecution. In essence, the US failed in their efforts to carry out an extraordinary rendition of Mr. Aswat and so have now resorted to attempting a legal rendition.

37. IHRC believes that it is the cornerstone of any system of justice that evidence of guilt be produced in a court of law before individuals are penalised in any manner, including transferring them to a foreign jurisdiction thousands of miles away, far from one's family, friends and community. IHRC believes that such a move would be a disproportionate interference with such individuals' Article 8 ECHR rights.

38. If conditions of pre and post trial imprisonment in the receiving state are particularly harsh, as in the case of the Admax Penitentiary in Florida, IHRC believes any extradition would be a violation of the individuals' Article 3 ECHR rights. IHRC refers the Panel to the recent submissions (December 2010) by the American Civil Liberties Union to the European Court of Human Rights in the case of Babar Ahmad and Others v The United Kingdom, in relation to the prison conditions in the US. The details in those submissions ought to be taken into account during the Panel's review of the UK's extradition laws.

39. IHRC believes that the Home Secretary's powers to stop extradition should be expanded beyond its current limits, which only allow her to stop extradition where she is of the opinion that it would breach the individual's human rights. IHRC believes that the Home Secretary should be given the power to stop extraditions where it is in the public interest to prosecute the individual in the UK, where the bulk of the offence has been committed in the UK, where no prima facie case has been established against the individuals, and where any evidence submitted does not meet the standards acceptable by the UK government, both in

terms of its source and substance. The foremost function of the Secretary of State in this regard should be to protect the individual's human rights and his/her right to a fair trial, and not the perceived trust between the UK and another state.

40. IHRC believes that the courts should also be granted a discretion to stop extraditions where they believe it is in the public interest for the individuals to be tried in the UK, if they believe the natural forum for trial should be in the UK, or if they believe justice would be better served by a trial in the UK.

41. IHRC thanks the panel for considering these submissions and welcomes the opportunity to assist the panel further by way of oral evidence.