THE GOVERNMENT RESPONSE TO
THE FIFTEENTH REPORT FROM THE
JOINT COMMITTEE ON HUMAN RIGHTS
SESSION 2010-12 HL PAPER 156, HC 767

The Human Rights Implications of UK Extradition Policy

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

October 2012

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Conclusion/recommendation 1

We recommend that the case-law on double jeopardy be codified so that extradition under a European Arrest Warrant is barred where the Crown Prosecution Service has decided not to prosecute for the same facts. This would strengthen an eventual forum clause. Such amendment could be done by adding a third paragraph to section 12 of the Extradition Act 2003.

Government response

The Government has no plans to change the law on double jeopardy. However, the Government has decided to seek to legislate afresh for a forum bar which will better balance the safeguards for defendants and delays to the extradition process, which were predicted by Sir Scott Baker.

In parallel, the Director of Public Prosecutions will independently publish draft prosecutors' guidance for cases of concurrent jurisdiction shortly.

Conclusion/recommendation 2

We agree with Liberty that adding a requirement for the requesting country to show a *prima facie* case – or a similarly robust evidential threshold in a civil law state – before a person is extradited will improve the protection of human rights of those subject to extradition. In particular, this will require investigatory authorities to assess the available evidence before issuing a request for extradition, particularly within the EU, thus reducing the likelihood that a person could be extradited on speculative charges or for an alleged offence which they could not have committed.

Government response

We accept the Baker review recommendation not to reintroduce a *prima facie* evidential test for those designated category 2 (non EU) territories not currently required to demonstrate a *prima facie* case when submitting an extradition request to the UK. It was the Baker review's view that the courts are, within existing provisions, able to subject requests to sufficient scrutiny to identify and address injustice or oppression.

The Government has therefore decided that the list of countries from which *prima facie* evidence is required is the right one, although we accept the recommendation of the Baker review to periodically review it.

Conclusion/recommendation 3

We recommend that, in cases where identity is disputed or where there are doubts as to the stage of proceedings reached in the requesting state, this facility to request further information be used. We recommend that the UK devote negotiating efforts to securing longer time limits for cases where an information request has been made. Where identity is disputed, as in the case of Mr Arapi, the requesting state should be asked to provide a copy of the national identity card or passport or other

photo ID. Where there are doubts as to the proper use of the European Arrest Warrant, the requesting state should be asked to provide information on the indictment process under their national law, the stage of proceedings reached, the date set for the first hearing and an assurance that the individual will not be interrogated on arrival.

Government response

The European Arrest Warrant (EAW) has had some success in streamlining the extradition process within the EU. The Baker review panel highlighted many of the benefits of the EAW and concluded that the system works reasonably well but the panel also recognised a number of issues. The Government is concerned in particular about the disproportionate use of the EAW for trivial offences and believes there are issues around the lengthy pre-trial detention of some British citizens overseas. These concerns were echoed by Sir Scott Baker; we know these concerns are shared by other Member States.

The Government will take the opportunity of the 2014 JHA opt-out decision to work with the European Commission, and with other Member States, to reform the European Arrest Warrant so that it provides the protections that our citizens demand.

Conclusion/recommendation 4

We recognise the importance of extradition and the benefits the European Arrest Warrant has brought in terms of a quicker, more streamlined process for surrender within the European Union. We agree with this evidence and recommend that the Government should take the lead in seeking to ensure that there is equal protection of rights, in practice as well as in law, across the EU.

Government response

See response to recommendation 3

Conclusion/recommendation 5

We urge the Government to work with the European Commission and other Member States to implement a proportionality principle in the Framework Decision, both for operational reasons and to ensure that the human rights implications of extradition are not disproportionate to the alleged crime.

Government response

See response to recommendation 3

Conclusion/recommendation 6

The Government and the Extradition Review may wish to review the list of 32 offences for which double criminality is not considered, with a view to whether certain conduct should be excluded from the definitions of these offences. We recognise, however, that the Framework Decision expressly excludes double criminality as a reason for denying the

execution of an EAW. We recommend that this principle be dealt with as part of the renegotiation of the Framework Decision.

Government response

See response to recommendation 3

Conclusion/recommendation 7

We urge the Government to ensure that other Member States do not use the European Arrest Warrant for purposes of investigation, if necessary by amendment to the Framework Decision. We recommend that, where there are doubts as to the stage of proceedings reached in the requesting state, the facility for further information provided by the Framework Decision and the Extradition Act 2003 should be used. The requesting state should be asked to provide information on the indictment process under their national law, the stage of proceedings reached, the date set for the first hearing and an assurance that the individual will not be interrogated on arrival.

Government response

See response to recommendation 3

Conclusion/recommendation 8

The system for removal of EAW requests should be improved or formalised to prevent repeat arrests where a court elsewhere in the EU has already refused to execute an extradition request. The Government should examine whether adopting Article 111 of the Schengen Information System would help avoid this problem. The Government should also negotiate membership of the SIRENE system which can be used to enter information on the execution of EAWs.

Government response

Article 111 of the Schengen Convention applies with respect to the Schengen Information System (SIS I). The UK has not put that system into effect. With respect to the second generation Schengen Information System (SISII) – which will replace SISI – an equivalent provision appears in Council Decision 2007/533/JHA on the establishment, operation and use of SISII. That is a measure subject to the 2014 block opt-out decision. No decisions have yet been taken as to which measures to opt back into.

Conclusion/recommendation 9

We note that Article 4(6) of the Framework Decision allows the requested state to deny execution of the European Arrest Warrant issued for the purposes of serving a sentence where the requested state undertakes that the sentence will be served in that state. We recommend that this safeguard be transposed into the Extradition Act 2003 as this would significantly reduce the impact of such execution European Arrest Warrants on Article 8 rights.

See response to recommendation 3

Conclusion/recommendation 10

We recommend that the safeguard in Article 5(3) of the Framework Decision be transposed into the Extradition Act 2003.

Government response

See response to recommendation 3

Conclusion/recommendation 11

We recommend that the Extradition Review panel carefully assess the applicability of the EU Charter on Fundamental Rights to the European Arrest Warrant as applied by the UK.

Government response

See response to recommendation 3

Conclusion/recommendation 12

The Government should increase the proof required for the extradition of British citizens to the US so as to require sufficient evidence to establish probable cause, as is required for the extradition of a US citizen to the UK. This will require renegotiation of the UK-US Extradition Treaty.

Government response

The Government agrees with the Baker review that the Treaty is not unbalanced. It is our clear view that the Government should not renegotiate the US-UK Extradition Treaty or introduce the concept of probable cause (the standard by which a US police officer has the grounds to obtain an arrest warrant), into UK law, which the Home Affairs Select Committee has proposed.
We therefore reject this recommendation.

Conclusion/recommendation 13

We recommend that the Government urgently renegotiate article 5(3) of the US-UK extradition treaty to exclude the possibility that extradition is requested and granted in cases such as that of Mr Bermingham and Mr Ahmed, where the UK police and prosecution authorities have already made a decision not to charge or prosecute an individual on the same evidence adduced by the US authorities to request extradition.

Government response

See response to recommendation 1.

Conclusion/recommendation 14

The Government should standardise the information received by those subject to extradition to ensure they receive sufficient, accurate information on the extradition process and their rights in the country to which they will be extradited.

Government response

Should British Nationals be extradited abroad and if they are in need of consular assistance, the Foreign Office would consider how best to provide this. Such assistance may include provision of assessments of local and specific conditions to their representatives.

It is otherwise not possible to provide standardised country-specific information to those subject to extradition due to the significant administrative burden this would entail.

Conclusion/recommendation 15

It would be helpful if the Government were to provide details of their procedures in relation to extradition of persons subject to immigration control and the precautions they take to ensure that these persons' rights are not infringed through either revoking their refugee status while they are outside the UK, or through their refoulement to another country.

Government response

In all cases, extradition to a requesting state must be in accordance with the Human Rights Act 1998. This is set out in statute. There are no additional protections afforded to requested persons subject to *immigration* control whilst they are in the UK.

Immigration status is not a determining factor in extradition proceedings, unless the person is a recognised refugee as defined by the 1951 Convention. Further, it follows that if a requested person who is subject to *immigration control* is being returned (or deported) to their country of nationality then that individual is either an immigration offender or is not a recognised refugee. That individual may have been refused refugee status, or pre-existing status as a refugee may otherwise have been 'withdrawn'. Reasons for cancellation, cessation or revocation of, or refusal to renew, a grant of asylum can be found in Paragraph 339A of the Immigration Rules.

It is UK policy to ensure that any claim for protection is dealt with before extradition proceedings can take place. In relation to cases where asylum claims are raised during extradition proceedings, it is the Government's intention to put this on a statutory footing once a suitable legislative vehicle arises.

Conclusion/recommendation 16

Extradition should not be the only method for dealing with suspects of crimes against humanity: we urge the Crown Prosecution Service to consider carefully whether such suspects can be tried in the United Kingdom before extradition proceedings are initiated.

Government response

The war crimes team of the Metropolitan Police Counter Terrorism Command (SO15) is responsible for the investigation of all allegations of war crimes, crimes against humanity, genocide and torture. The Crown Prosecution Service, Special Crime and Counter Terrorism Division (SCCTD) has responsibility for prosecuting any such crimes. SO15 and SCCTD have agreed guidelines in regard to the investigation and prosecution of allegations of war crimes, crimes against humanity, genocide and torture.

In all such cases, a decision on whether a suspect could be tried in the UK is taken in accordance with the Code for Crown Prosecutors.

Conclusion/recommendation 17

The lessons from the European Arrest Warrant must be learned when negotiating the form of the European Investigation Order. The Government must ensure that there is an effective proportionality safeguard in the Directive, in order to ensure that the European Investigation Order operates effectively and that there are not numerous requests for information for minor cases.

Government response

The Government has pressed for stronger proportionality safeguards during European Investigation Order (EIO) negotiations. The issue has been recognised by the European Parliament who have proposed amendments to the draft EIO which will require issuing authorities to consider (and show they have considered) proportionality before issuing an EIO. The European Parliament has also proposed that where an executing authority considers that the EIO is a) disproportionate or b) for a minor offence, after consultation, the EIO may be withdrawn. Although not a ground for refusal, these proposals acknowledge the importance of considering proportionality (and a weakness in the EAW), but also adds a mechanism for withdrawing the request that it is unlikely to create delays. The negotiation of the EIO is ongoing.

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