

# The New European Extradition System – a Critical Review<sup>1</sup>

By Catherine Heard

In the last ten years the European Union has legislated to create an “area of justice, freedom and security” across Europe. Following the horrific events of 9/11 and subsequent attacks in Madrid and London, EU criminal justice policy has been aimed at streamlining and fast-tracking cooperation between prosecution agencies across borders. Part of this has involved measures to improve the mutual recognition of judicial decisions within the Union. We welcome EU legal measures that help states cooperate in bringing to justice those suspected or convicted of criminal offences, as long as individuals’ fundamental rights are not compromised in the process.

The first and most important measure has been the new fast-track extradition system imposed on all Member States by the European Council Framework Decision on the European Arrest Warrant (EAW).<sup>1</sup> This was incorporated into U.K. law by the Extradition Act 2003. This Act also covers other designated territories, making extradition quicker and easier from (and to) countries such as Libya, Russia, Azerbaijan and others with questionable adherence to the rule of law or internationally recognised fair trial procedures.

The new scheme provides a simplified extradition procedure between member states, fast-tracking the execution of requests for the arrest and surrender of a person present in another member state, whether for trial or to serve a sentence. The system substantially reduces the grounds to resist extradition, creating almost no room for judicial discretion to deny surrender, even where evidence on which the charges are based has been obtained by police brutality against key witnesses, for example in the case of Fair Trials International client, Andrew Symeou discussed further below.

Fair Trials International (FTI) works internationally to help people facing charges outside their home country. There has been a vast increase in extradition cases since the Extradition Act came into force. FTI recognizes the need for an efficient extradition system and for states to cooperate to bring to justice individuals guilty of committing offenses. However, our cases show that dangers can result from mutual cooperation where there is insufficient mutual trust in the ability of other states’ procedural systems to protect people’s fundamental legal rights.

FTI has major concerns about the human costs of potential misuses of the new extradition system. Our own casework regularly illustrates these costs. Unfortunately, a system intended to combat serious and organized crime and terrorism is being used to make inappropriate extradition requests. Clients of ours have been extradited for trivial offenses, or decades after the events in question, or following serious police misconduct during the investigation. It is being further undermined by failures to respect fundamental fair trial rights and the rule of law in some cross-border cases, with tragic consequences for individuals caught up in the process.

## *Main features of the new extradition scheme*

Across Europe, the new scheme made radical changes to the previous extradition arrangements. There is no longer a role for the executive in decisions on extradition: it is now a purely judicial process, albeit with vastly reduced grounds for refusing extradition. The requesting country no longer has to establish a *prima facie* case against the suspect. Under new time limits, the average time taken to execute a warrant has fallen from nine months to 43 days. The “dual criminality” requirement has been abolished in respect of 32 offenses. The rules against extraditing own nationals and people accused of political offenses have been abolished.

Government figures show that the number of extradition arrests made in the U.K. is on the increase, and will rise further next year, partly due to the U.K.’s migration in April 2010 to the Schengen Information System II, a new EU-wide data system which is expected to facilitate the transfer and processing of “alerts” for wanted persons across Europe.

Some of FTI’s recent cases illustrate the defects in the new system.

1. *Judges allow extradition even where evidence obtained illegally*  
Andrew Symeou

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<sup>1</sup> International Enforcement Law Reporter, Volume 25, Issue 10, October, 2009, p. 398

Andrew, then a university student of exemplary character with a bright future ahead of him, was on holiday with friends in Zante, Greece in 2007. One night while Andrew was in Zante, another young Briton fell off an unguarded stage in a night-club, tragically dying two days later from his head injury. Andrew insists he was not even in the club at the time – and many witnesses have since confirmed this. He was never sought for questioning at the time, and knew nothing about the incident when he flew home at the end of his holiday. A year later, he was served with an EAW seeking his extradition to Greece to stand trial for murder. Only during the course of his legal challenge has it emerged that the EAW is based on completely flawed evidence, much of it extracted through the brutal mistreatment of two witnesses who have since retracted their (word for word identical) statements. We believe that it would be an abuse of the EAW scheme to extradite someone to face trial based on this evidence but the British courts rejected these arguments. Andrew has now been extradited to Greece. Even if the Greek courts ultimately throw out the case, Andrew may have to spend months in a Greek jail awaiting trial.

## 2. *Extradition for minor offenses*

One of the most worrying practices we have observed is the use of EAWs for minor offenses. The new legislation contains no express requirement on states to conduct a proportionality test before issuing an EAW. Warrants are being issued for petty offenses like the theft of piglets, a cupboard door, and (as our case below highlights) the possession of 100 euros in counterfeit currency by a British teenager on holiday.

### *MJ (anonymity requested)*

MJ was just 18 when he went on holiday to Spain with two friends. While there, all three were arrested in connection with counterfeit euros. MJ himself had no counterfeit currency on him when arrested and has no idea how counterfeit notes came to be on his two friends and in their rented apartment: the police found 100 euros in two notes of 50. The boys were held in a cell for three nights, then appeared in court and had a hearing lasting less than an hour, after which they were released but told they might hear from the authorities later.

MJ returned to the U.K. and heard nothing more until 2007, 4 years later. One day he was studying in his university room, when officers from the Serious Organized Crime Agency came and arrested him on an EAW.

He was extradited to Spain and remanded to a maximum security prison in Madrid. Other inmates told him he might be in prison for up to two years waiting for a trial: this often happens in Spain. Under immense pressure and fearing for his future, MJ decided to plead guilty, even though he would have preferred to fight the case on home ground, or at least on bail, and with a good lawyer he could communicate with in English. None of this was possible, and he ended up spending 9 weeks in prison before receiving a suspended sentence after pleading guilty, desperate to come home to start his university course. He recently passed his first year exams and is ambitious for his future, but worried his career prospects could be blighted by a criminal record.

## 3. *Lack of adequate procedural safeguards in the requesting state*

The EAW scheme is essentially a “no questions asked” procedure, and as such is based on the premise of mutual trust between member states in each other’s justice systems. Indeed, the system can only be justified on that basis. However, the presumption that all EU member states provide sufficient safeguards for defendants (nationals and non-nationals alike) to receive a fair trial is unfounded, as FTI’s cases often demonstrate. Previous attempts to legislate at the EU level to require all member states to raise defence rights to a basic minimum consistent with Article 6 of the European Convention on Human Rights have failed, vetoed by a handful of states including Great Britain.

FTI believes the solution is not to tear up the EAW system but to improve it so that it works more fairly; and, simultaneously, to legislate for stronger procedural defence rights across the EU. The new Swedish Presidency says it will prioritise defence rights during its period of office. It presented a *Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings* on 1 July 2009. The Roadmap envisages legislation guaranteeing rights to translation and interpretation facilities, information on charges, access to legal advice and legal aid, communication with consular officials and family, and regular review of pre-trial detention.

Sadly, because the EAW scheme came into force before minimum procedural safeguards were in place, people can be extradited to serve a prison sentence even after an unfair trial, as Garry Mann’s case illustrates.

### *Garry Mann*

Garry Mann, a 51-year-old fireman from Kent, went to Portugal during the Euro 2004 football tournament. On 15 June 2004 while Garry was with friends in a bar, a riot took place in a nearby street. Garry was arrested along with other suspects some 4 hours after the alleged offenses. He was tried and convicted, less than 24 hours after his arrest. He had no time to prepare his defense. Standards of interpretation at the trial were grossly inadequate. He was convicted and sentenced to 2 years imprisonment but, after agreeing to be deported, was told that he would not have to serve his sentence provided he did not return to Portugal for a year.

Back home, Garry tried unsuccessfully to appeal his conviction in October 2004. He received no response from the Constitutional Court in Lisbon. Separately, the Metropolitan police applied for a worldwide football banning order against Garry, but in 2005 the District Judge held Garry had been denied a fair trial in Portugal and refused the order.

In March 2009, Garry was astonished to be arrested on an EAW, alleging he was wanted in Portugal to serve a 2 year prison sentence. His extradition was ordered on 18 August 2009. He will appeal against extradition.

FTI believes Garry should not be extradited to serve a prison sentence following a trial that breached his basic fair trial rights and against which he has no further right of appeal.

#### *4. The passage of time and the flawed system for removing EAW "alerts"*

EAWs are sometimes issued for alleged offenses that took place so long ago that a fair trial becomes impossible. Requested persons have no reliable way of accessing information about EAW alerts against them or getting an alert against them withdrawn after the completion of extradition proceedings. The Framework Decision contains no provisions on securing removal of an EAW once extradition has been refused. So, despite two countries having refused someone's extradition, as in the following case, the person cannot compel the removal of the EAW. This flies in the face of the principle of mutual recognition.

### *Deborah Dark*

In 1989, Deborah Dark was arrested in France on drug charges and held in custody for eight and a half months. Her trial took place later in 1989 and the court acquitted her of the charges. She was released and returned to the U.K. The prosecutor appealed but Deborah and her French lawyer were not notified. The appeal was heard in 1990 with no one there to present Deborah's defense. The court found her guilty and sentenced her to 6 years' imprisonment. Again, she was not notified the appeal had taken place overturning her acquittal. As far as she was concerned she had been found not guilty and was free to rebuild her life. But in April 2005, fifteen years after the appeal, an EAW was issued by the French authorities for Deborah to be returned to France to serve her sentence.

In 2007, Deborah was arrested at gunpoint in Turkey, while on holiday. The police soon released her, unable to explain the arrest. On her return to the U.K., she went to the police and tried to find out the reason for her arrest. She was told there was no arrest warrant against her.

In 2008 Deborah travelled to Spain to visit her father who had retired there. On trying to return to the U.K., she was arrested and taken into custody in Spain, where she faced extradition to France. Deborah spent a month in custody before her extradition hearing. The Spanish court refused to extradite Deborah on the grounds of unreasonable delay and the significant passage of time. She returned to the U.K. but her ordeal continued. On arrival home she was arrested again - this time by police at Gatwick. Again, she refused to consent to extradition and was released on bail pending another hearing. The Court refused the extradition in April 2009. (The U.K. implementing legislation does expressly allow a judge to refuse extradition on passage of time grounds.) Until France withdraws the EAW, Deborah remains at risk of re arrest if she travels in Europe again.

People like Deborah face unnecessary hardship when an EAW is not removed after the resolution of extradition proceedings. Prisoners in their own country, unable to challenge EAWs and alerts on Interpol and other databases, powerless to obtain information on the status or accuracy of an EAW against them, they live in fear of repeated extradition hearings whenever they travel.

FTI believes the new European extradition system could perform a valuable function in the fight against serious cross border crime, by aiding mutual recognition of judicial decisions through simpler, speedier extradition between states. However, for the scheme to be truly successful, it must be made to work more justly and fairly and to respect proportionality and the rule of law.

We are working for a more just and fair system of extradition in Europe and for binding legislation on defence rights in all member states. Our cases show reform is needed and we have concrete proposals for this reform. We have launched a campaign to raise awareness of the problems in the system and the need for change. We will be calling on U.K. and European political representatives to legislate for change. To learn more about our campaign and its aims, please visit [http://www.fairtrials.net/campaigns/article/justice\\_in\\_europe/](http://www.fairtrials.net/campaigns/article/justice_in_europe/).