

## ECBA panel on extradition

Rebecca Niblock

- **Very short explanation of how the extradition works in your country. We might not go through it in detail, but you should be able to explain it in 1 minute if there is need.**

Extradition Act 2003 divided into Part 1 and Part 2 for “export” extradition. Part 1 covers EAW. Major differences with the EAW scheme are:

- The Secretary of State for the Home Dept (SSHJ) has to certify the extradition request, and then, after a hearing in court, the judge will send the case to the SSHJ to order extradition
  - Proceedings are generally lengthier.
  - Many countries are required to show a prima facie case.
  - There is no proportionality bar, nor is there a bar preventing extradition where there has been no decision to charge/try (as there is in EAW cases), nor is there a bar based on a person’s age; conversely, there is a bar preventing extradition because of hostage taking considerations and a bar preventing extradition for a person who has been sentenced to death.
- **An example of an extradition case you have worked on where you challenged the extradition (serious risk of violation of human rights) and the court refused the extradition or granted it to your astonishment. How did you prepare the case? What types of information did you gather to convince the court? What seems to have a real impact?**

A difficult case of mine in which extradition was ordered is a Russian case where our client’s extradition was ordered in October 2017. Our client had been subjected to ill treatment in custody in Russia before he came to the UK, yet the judge still ordered extradition on the basis that assurances from Russia could be trusted. That case is subject to appeal and we are hopeful (although not convinced) that the High Court will overturn the decision of the court below, given current UK-Russia relations.

- **Do you think that the European Union should provide a list of “safe” countries (extradition in principle, refusal in particular cases), a list of “doubtful” countries (case by case, high level of doubt) and a list of “blacklisted” countries (no extraditions allowed until further notice)?**

No – I think each case should be assessed on its merits. A list of this kind would be likely to lead to judges taking short cuts, and being unwilling to consider the risks emanating from “safe” countries.

- **Should there be a minimum standard of extradition proceedings, with a strict timeline to take the final decision?**

Yes. I think there should be a system of custody time limits, and review.

- **What is your opinion on trial via video conference, refusing to surrender the requested person and following up on the trial from the requested state, possibly even executing the sentence if the person is convicted (and prison conditions are doubtful)?**

I would not be in favour of this. The justice outcomes of video conferencing in relation to criminal trials is doubtful: it is easier to convict a person if they are not in the room. If the person cannot be surrendered because of the risk of human rights violations, it is hard to imagine how the fairness of any trial in these circumstances could be guaranteed.

- **Do you have any ideas on how to harmonize or improve the extradition to third countries? Less uncertainty, more guidelines for member states,...**

It is useful to pool experience. In respect of England & Wales, I am of the view that the implementation of the principle of mutual trust and confidence in relation to EAWs (which the UK courts were initially sceptical of, but which has now been taken up with gusto) has leaked into non-EU countries, particularly Council of Europe countries and, as the example of the Russian extradition case shows, even in cases with whom the UK does not have positive relations. Extradition practitioners in England & Wales are fortunate to be in a jurisdiction where real scrutiny is applied to extradition requests, and as a lawyer that benefits from that, I would say that it would be good if other countries applied the same scrutiny. One of the reasons that we have an established and experienced set of extradition lawyers in England & Wales is because extradition is centralized and confined to the London courts. There is much that we can learn from the way in which other states deal with extradition requests – and I look forward to hearing from the other panelists on what they feel their jurisdiction gets right.

- **All interesting thoughts or comments on the subject are welcome.**