

Coronavirus (COVID-19) and delays to extradition (Cosar v Governor of HMP Wandsworth)

18/05/2020

Corporate Crime analysis: This case concerns the impact of the coronavirus (COVID-19) pandemic on the execution of European Arrest Warrants (EAWs). Extradition is presently impossible due to travel restrictions that have been imposed across Europe. The judgment considered the legality of repeated short-term extensions to the ten-day period in which extradition on an EAW must take place. Under Article 23 of the Framework Decision, extradition can be lawfully postponed where there are serious humanitarian reasons to do so, or where removal is prevented by circumstances beyond the control of any Member State. The court held that the coronavirus pandemic is capable of satisfying either criteria. A requested person is not entitled to be notified of any application to extend the extradition period, or to make representations at a hearing. However, in the present circumstances it is good practice to notify a requested person of any extension and to allow them access to legal representation. Written by Georgia Beatty, barrister at 5 St Andrew's Hill.

Cosar v Governor of HMP Wandsworth; Chmurzynski v Governor of HMP Wandsworth [2020] EWHC 1142 (Admin), [2020] All ER (D) 64 (May)

What are the practical implications of this case?

This judgment is highly specific to the context of the coronavirus pandemic, but does shed light on the types of situation that may provide for lawful postponement of extradition as envisaged by Article 23 of the Council Framework Decision 2002/584/JHA (Framework Decision) and [section 35](#) of the Extradition Act 2003 ([EA 2003](#)). A global pandemic necessitating travel restrictions is capable of constituting a circumstance 'beyond the control of any of the Member States', and a 'serious humanitarian reason' as described by Articles 23(3) and 23(4) of the Framework Decision respectively.

Furthermore, extensions can be agreed more than once if necessary. Lewis J also suggested that an extension may not need to start from a specific calendar date, but rather could be set to run from a particular event occurring. This creates the possibility of extensions that are uncertain in length, or even indefinite.

Finally, this case confirms that a requested person has no procedural right to be notified of an application to extend the extradition period, or to make representations at a hearing. The court took the view that extension agreements do not form part of the process of deciding whether a person should be extradited and are essentially administrative. However, the court also suggested that in these uncertain times it is best practice to notify the requested person of a decision to extend, and to allow them continued access to representation. This will ensure that those who remain detained for an uncertain period awaiting extradition will be able to seek any remedies that may be available as a result of the extension, such as applying for bail or claiming for judicial review.

What was the background?

The case involved applications for habeas corpus, or alternatively for permission to apply for judicial review, from two individuals who had been detained pending extradition pursuant to an EAW. In both cases, the ten-day period in which extradition must take place under [EA 2003, s 35](#) had been extended twice due to travel restrictions imposed as a result of the coronavirus pandemic. The first applicant is currently detained awaiting extradition to Romania. The second applicant was due to be extradited to Poland, however his EAW has subsequently been withdrawn. He has therefore been discharged from custody.

Three key issues were considered by the High Court:

- is habeas corpus the appropriate procedure in this case, or should the applications have been brought by way of a claim for judicial review?
- were the decisions to extend the period for extradition unlawful?

- should the applicants have been notified of the application to extend the extradition period and given the opportunity to make representations at a hearing?

What did the court decide?

In relation to the first issue, both applications for habeas corpus were dismissed. Habeas corpus is available to determine the lawfulness of detention (at [44]). Both applicants had been detained by order of a district judge at the conclusion of their extradition hearings, and this order is sufficient authority to justify detention (at [45]). Permission was granted to the first applicant to continue his application as a claim for judicial review of the extension agreements. Permission was not granted to the second applicant, as his discharge on the warrant and release from custody rendered his claim academic (at [50]).

On the second issue, it was held that the agreements to extend the extradition period for the first applicant were lawful. The Framework Decision provides for two situations in which the extradition period may be extended in appropriate circumstances—Article 23(3) allows for an extension where surrender is prevented ‘by circumstances beyond the control of any of the Member States’, and Article 23(4) permits temporary postponement for ‘serious humanitarian reasons’. The High Court held that the travel restrictions imposed due to coronavirus are capable of satisfying both of these provisions (at [54] and [56]).

Furthermore, it is not the case that the extradition period may only be extended once. The wording of [EA 2003, s 35](#) does not contain any express or implied limit to the amount of times that an extension can be agreed (at [58]). It is also not the case that repeated short-term extensions amount in substance to an indefinite extension. At present it is not known when the travel restrictions will be lifted, and repeated short-term extensions in changing circumstances are consistent with the provisions of Article 23(4) of the Framework Decision, which provides that extradition should take place as soon as the serious humanitarian concerns have ceased (at [64]). The court left open the question of whether an agreed extension has to run from a specific calendar date, or whether it could be agreed from a particular event occurring, such as the lifting of travel restrictions (at [65]).

Regarding the third issue, it was held that there is no requirement to notify a requested person of the request to extend the extradition period, or to allow them to participate at a hearing to consider that request. Unlike other provisions of [EA 2003, s 35](#) contains no express requirement for notification, and the common law principles of fairness do not require that such a requirement should be ‘grafted on’. Extension requests do not form part of the extradition hearing or the decision to extradite, and they do not involve anything resembling litigation between the parties (at [70]). Furthermore, there is no unfairness to the requested person by failing to notify them of the request or denying them the opportunity to make representations. The requested person has several other remedies available, which could include judicial review of the decision to extend, a bail application, or an application to reopen the refusal of permission to appeal (at [71]).

However, in a separate concurring judgment, Irwin LJ recommended that in the present exceptional circumstances, it is good practice that a requested person should be notified of any applications to extend the extradition period. He also recommended that requested persons should have continued access to legal representation. The coronavirus travel restrictions could result in considerable delay, and requested persons will need to be advised as to whether such delay could constitute grounds for any of the remedies referenced above.

Case details

- Court: High Court of Justice, Queen’s Bench Division
- Judges: Irwin LJ and Lewis J
- Date of judgment: 11 May 2020

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