

EXTRADITION: An Introduction for Chambers & Partners 2023 UK Bar Guide

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Extradition involves the forceable transfer of accused or convicted persons from one jurisdiction to another in order to face trial or serve a sentence for a criminal offence. The advent of Brexit has meant a change to the way the UK's extradition relationships with the EU

function. There remain significant numbers of non-EU (Part 2) extradition requests which are complex and often highly politicised.

The last 12 months

The Grand Chamber of the European Court of Human Rights heard the case of Sanchez v the United Kingdom in February 2022, concerning an extradition request from the US for drug trafficking. The Strasbourg Court will consider the issue of whether the US system of Life Sentence without Parole complies with Article 3 of the European Convention on Human Rights.

In the last year there have been the first requests ever made to the UK by South Korea and Japan. The Japanese request is particularly unusual in that it is an ad hoc request, based on a Memorandum of Cooperation between the two countries rather than a pre-existing extradition treaty and is an allegation against the UK nationals of robbery of a Tokyo jewellery store.

The case of *CPS v Beumont* [2022] EWHC 489 (Admin) concerned the extradition into the UK from Mexico and a failure to comply with specialty.

There are the first contested Kuwaiti requests ongoing, which will consider the impact of torture and prison conditions on the ability to extradite there.

The first request from Thailand was discharged on the basis of dreadful prison conditions and was not appealed.

There is an upturn in arrests from US requests following the introduction of the Extradition (Provisional Arrest) Act 2020, that allows police officers to arrest a person on the basis of an INTERPOL Red Notice rather than a full extradition warrant in relation to some specified territories.

Other ongoing cases involve requests from Ukraine, which will consider the impact of the ongoing armed conflict. Turkey continues to issue politically motivated requests for Kurds and alleged sympathisers with the Gülenist movement.

Brexit

Brexit has brought an end to the assumption that extraditees will simply be permitted to return to the UK after they have stood trial and/or served their sentence abroad. There has been a line of High Court cases examining the post-Brexit position for extraditees with pre-settled or settled status under the EU Settlement Scheme or pending applications.

A series of cases have looked closely at the immigration rules and their relevance to the Article 8 balancing exercise in extradition in the post-Brexit landscape where individuals who have been extradited to the EU find it difficult to return to their homes in the UK. The key question now is whether extradition would make a material difference to the requested person's immigration status, and whether or not they are likely to be deported anyway (as in *Gurskis v Latvia* [2022] EWHC 1305 (Admin)) and also their current leave or pending application would lapse if they are extradited (as considered in *Murawska v Poland* [2022] EWHC 1351 (Admin)).

INTERPOL

INTERPOL Red Notices are the precursor to extradition and INTERPOL continues to try and reform its procedures to combat abuse of its Red Notice System. In 2021 Major-General Al-Raisi of the UAE was elected president of INTERPOL to the dismay of human rights organisations. He has been accused in several jurisdictions of overseeing torture and mistreatment in the UAE.

On a positive note, the new election of the Commission for the Control of Files has removed the Russian member who was accused of issuing politically motivated extradition requests and Red Notices.

Rule of law update

The Russian invasion of Ukraine has led to Russia being expelled from the Council of Europe and calls to suspend extradition arrangements with them. However, the UK has not suspended extradition arrangements as yet.

Over the last decade there have been gradual legislative reforms in numerous European states, such as Poland, Hungary and Romania, which have led to a blurring of the separation

of power and attacks on judges and lawyers. These reforms raise serious concerns over whether the judiciary in some states are sufficiently independent. The Council of Europe continues to monitor both Poland and Hungary.

In extradition, issues have been raised about the impact of the erosion of the rule of law on the ability of the judiciary in those states to issue and preside over European Arrest Warrants, as well as whether individuals who were extradited would receive, or had received, a fair trial. The leading case of *Wozniak v Poland* [2021] EWHC 2557 (Admin) was handed down in September 2021, which focused on the issue of whether the structural deficiencies were sufficient to undermine the right to a fair trial and found that they could not. The requested person would have to show a real risk of breach of their own fair trial rights as a result of the legislative changes.

This has been confirmed in respect of Hungary, *Bogdan v Hungary* [2022] EWHC 1149 (Admin), in which permission to appeal was refused), and the argument was conceded in respect of Romania, *Tiganescu v Romania* [2022] EWHC 1371 (QB). It remains to be seen whether the continued erosion of the rule of law in these and other European countries will reach a stage where the structural deficiencies will be sufficient to prevent extradition and whether Brexit will affect the approach of the High Court when these issues are next raised.

Prison conditions

Prison conditions remain a central feature of extradition litigation and the compatibility with Article 3 of the ECHR, due to overcrowding and poor material prison conditions in the requesting state.

The High Court has heard a string of Romanian cases dealing with the adequacy and reliability of assurances and culminating in the recent decision in *Marinescu & Ors* [2022] EWHC 2317 (Admin). One of the issues was whether the assurances provided contained

| "*undertakings, in the proper sense of the word*"

or whether they were simply descriptions of conditions. The Divisional Court emphasised the

need to focus on the substance rather than form of an assurance and to consider whether the document unequivocally identified a solemn promise.

Other recent cases have addressed prison conditions in countries such as Poland (*Litwinczuk & Ors* [2021] EWHC 2735 (Admin)), Greece (*Sula* [2022] EWHC 230 (Admin)) and France (*A & Esmaili* [2022] EWHC 841 (Admin)).

Conclusions

Extradition is where politics and law collide - it is the coming together of law, human rights and international relations. It has political ramifications far beyond individual cases and is the one area where authoritarian regimes can try and involve themselves in the UK court system.

To access the previous (2022 Edition) Extradition Introduction for Chambers & Partners, click [here](#). *Written on 16 September 2022 for the 2023 Edition.*

About the authors

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