

European Court's extradition ruling: A major blow to democratic rights

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The decision by the European Court of Human Rights (ECHR) that five men detained on terror-related charges can be extradited to the United States is a major assault on democratic rights.

The ECHR is the final court of appeal against violations of the European Convention on Human Rights, adopted by the 47-member state Council of Europe.

Tuesday's hearing concerned six men—Abu Hamza, Adel Abdul Bary, Khaled al-Fawwaz, Babar Ahmad, Syed Talha Ahsan and Haroon Rashid Aswat. All are currently held in the UK under US extradition warrants.

Hamza is the best known of the detainees. The hook-handed, Egyptian-born radical cleric, who praised the 9/11 terror attacks, has long been the *bête noire* of the British political establishment, eager to justify the draconian infringements it has made under the so-called “war on terror”.

In 2006, Hamza was charged with inciting murder and racial hatred and sentenced to seven years in prison. The US accuses him of promoting violent jihad or holy war.

Unlike Hamza, however, none of the other five detainees have ever been charged with an offence in the UK. Yet scandalously, they have been imprisoned for years without trial.

Three of the men—Ahmad, Ahsan and Aswat—are British citizens.

Ahmad has been in prison for eight years—the longest period of detention without charge of a Briton under UK anti-terror legislation.

First arrested in December 2003, Ahmad was released six days later. His complaint that he had been subject to repeated physical, sexual and religious abuse during his arrest was admitted by the Metropolitan Police in March 2009.

Ahmad was finally awarded £60,000 compensation for the 73 recorded injuries he had sustained as a result of brutal assaults. By that time, he had already been detained

without charge for five years, under a US extradition request issued in August 2004.

Ahmad, along with Ahsan, is accused of conspiring to support terrorism through various web sites he ran. They include Azzam Publications, which carried accounts of atrocities by Russian and Western forces in Chechnya, Afghanistan and elsewhere. Although the web sites were operated from London, the US claims jurisdiction because they used Connecticut-based servers.

Ahsan, detained without charge since 2006, suffers from bipolar disorder and is considered a suicide risk.

Aswat has been held since 2005 under a US warrant alleging his involvement in an Oregon terror training camp in 1999. A schizophrenia sufferer, Aswat has had a mental breakdown and is now detained in Broadmoor secure hospital.

The plight of Bary, an Egyptian national, and al-Fawwaz, from Saudi Arabia, is even worse. Held without trial for 12 years after they were arrested separately in London at the request of the US authorities, both are accused of involvement in the US embassy bombings in Tanzania in 1998.

The men's extradition was sought under the 2003 US/UK Extradition Treaty, signed just one month after both countries had begun their criminal invasion and occupation of Iraq.

The treaty allows for anyone in the UK to be extradited to the US for breaking US law, even if the alleged offence was committed within the UK. Moreover, the US does not have to provide *prima facie* evidence of the charges made, only “reasonable suspicion”.

All this is accepted by the UK authorities, which have repeatedly refused to try the men in Britain, and have been determined to extradite them.

In 2010, the six appealed to the ECHR. They argued that, if extradited and convicted in the US, their detention in one of the country's “super-maximum” security

prisons would contravene the European human rights act forbidding “inhuman or degrading treatment or punishment”.

In an undertaking made all the more damning by the fact that it should have to be made, the US assured the ECHR that the six would not be subject to extraordinary rendition, treated as “enemy combatants” or face the death penalty.

Nonetheless, the ECHR halted extradition proceedings in July 2010 to consider the complaints.

While accepting US assurances, two outstanding issues remained: whether prolonged solitary confinement and life imprisonment without the chance of parole constitutes ill-treatment.

On Tuesday, the ECHR found that they did not.

The court was told that solitary confinement was a “regular way of life” in such prisons. But with rank hypocrisy, the ECHR found that detainees had access to services and activities “which went beyond what was provided in most prisons in Europe.”

Perversely it ruled that “there are adequate opportunities for interaction between inmates. While inmates are in their cells talking to other inmates is possible, admittedly only through the ventilation system.”

Such restrictive conditions were justified if inmates were a “significant security risk”, it said. As to the possibility of life imprisonment without parole, the ECHR ruled this was proportionate to the “seriousness of the offences in question”.

The court struck out Hamza’s claim on the basis that he would not be detained in a super-maximum prison, due to his disabilities. As for potential mental health issues in the cases of Ahmad, Ahsan and Bary, the court said that these had not prevented them from being held in high-security UK prisons.

A decision on Aswat is pending further consideration. The remaining five have been given three months to appeal to the ECHR’s Grand Chamber—a plea that will almost certainly be rejected.

The verdict is politically motivated.

As the *Los Angeles Times* commented, the case was important “for US-Europe relations”. Vetoing extradition “would have been tantamount to a denunciation of the American judicial and corrections system and could have dealt a blow to anti-terrorism cooperation across the Atlantic.”

British officials had complained that a negative ruling by the court would irreparably damage US/UK relations, with some demanding the UK withdraw from the ECHR.

John Bolton, former US ambassador to the United Nations, went even further. Speaking prior to the decision, he said that an ECHR veto would call “into question the ability of Europe as a whole to be an effective partner in the war against terrorism.”

In the end, the ECHR found there was minimal concern for human rights abuses when extradition involved removal “to a state which had a long history of respect of democracy, human rights and the rule of law.”

The court’s decision has implications beyond anti-terror cases. As the BBC had commented, the verdict would “define how far the arm of US law enforcement can reach into Europe.”

Last month, the UK authorities approved the extradition of 23-year-old student Richard O’Dwyer to the US on charges of copyright infringement.

Next week, the UK’s Supreme Court is expected to deliver its verdict on the appeal by WikiLeaks founder Julian Assange against his extradition to Sweden on trumped up charges of sexual assault.

Assange has been held under house arrest in London since December 2010, under a European Arrest Warrant. Under the EAW—also agreed on anti-terror grounds in 2003—a person can be extradited anywhere in Europe to stand trial, even if they have not been charged with an offence in the country they are resident.

Assange has rightly argued that his extradition to Sweden would be the precursor to his removal to the US, with which Sweden has an extradition treaty similar to Britain’s.

A secret grand jury in Virginia has already prepared a sealed indictment against Assange for espionage, which carries the death penalty.

The indictment is in retaliation for WikiLeaks’ publication of thousands of classified documents revealing US war crimes and other conspiracies.

If, as expected, the Supreme Court sanctions Assange’s removal, the ECHR is the WikiLeaks founder’s last legal redress.



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