



UK INDEPENDENCE PARTY

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European Arrest Warrant – Whitewash Won't Wash!

**Response to the Scott-Baker Review Panel Report
on the European Arrest Warrant**

Introduction

In better ages of its legal history than the one we are living through, Britain developed a uniquely fair system of criminal justice. Our achievements on this field have excelled those of Ancient Rome and remain unparalleled in the history of civilisation. Throughout the world, our common law system became an ideal which other nations strove to copy.

Yet, the very excellence of British justice produced some new dilemmas - such as the extradition of suspects to other countries. We do not want to become safe havens for foreign fugitive criminals; on the other hand, how can we hand over suspects to the countries where the system of criminal justice is so different from – and inferior to – our own?

This has been resolved by a number of safeguards which evolved over centuries to protect the liberties of the suspects whilst enabling extradition of genuine fugitives. Thus, we would not extradite people to countries where they would be tortured or subjected to unfair trial. The so-called 'dual criminality' requirement bars extradition where a person is wanted for actions which would not be considered a crime in this country. Above all, a country requesting extradition first had to prove to a British judge that they had a *prima facie* case for the suspect to answer.

As the government working party which reviewed our extradition arrangements reported in 1974, *"the requirement of prima facie evidence remains the only real safeguard against the trumped up case, and we venture to think that it must serve to deter some applications for extradition where a warrant of arrest has been issued in a foreign State on largely unsupported suspicion of guilt."* The report further pointed out that the requirement of a *prima facie* case was also the only effective guarantee that judges have enough information to establish dual criminality and that the suspect is not wanted for political reasons. Without the *prima facie* case safeguard, the other safeguards would also effectively go by the board.

Unfortunately, this is precisely what has happened since then. Under the EU's 'European Arrest Warrant' system, extradition has been replaced with 'judicial surrender' – a mere bureaucratic formality. Where there is an EAW, our judges are now forced to extradite people on the strength of a piece of paper. In practice, all they have to check is that the brief form has been filled correctly (admittedly, even that sometimes becomes a difficulty for our EU partners, but the judges are obliged to take a generous cosmopolitan view of their efforts).

Within a short time, sure enough, the EAW has led to many notorious cases of injustice: Andrew Symeou and Garry Mann, Michael Turner and Jason McGoldrick, the 'Crete five' and Dr. Meizoso are just a few best known names from a much longer, and growing, list of its subjects, and sometimes completely innocent victims. We only know about these people because their families, friends and supporters managed to wage energetic and articulate campaigns on their behalf. No doubt, many others were less fortunate than that. Unknown and helpless, they silently disappeared into foreign jails – because our courts have abandoned their duty to protect the weak against injustice and tyranny.

No doubt, the EAW became the most disastrous result of the removal of the *prima facie* case requirement; but it is not the only one. The extradition to the United States is only slightly better. Worse still, under the Council of Europe's European Convention on Extradition, the requirement is also removed for some countries where the very idea of rule of law remains a utopian dream of a few troublemaking dissidents – such as Russia and Azerbaijan.

Lord Baker's Review Panel Report

For a few years now, it has been universally recognised that this country's extradition arrangements must be urgently reformed; especially the most dangerous aspect of them – the European Arrest Warrant. Both Government parties have solemnly promised to do that when they come to power. To review the existing system and make recommendations, the government appointed an 'independent panel' led by Lord Baker – a retired top judge best known for his inquest into the death of Princess Diana.

Having spent over a year on this work, having traveled extensively to Brussels, Hague, and Washington, the panel has now produced its 488-pages long report – only to endorse the present system and to recommend no change.

This review is remarkable in many respects. To begin with, the panel simply ignores all the notorious cases which have led to this review in the first place. They were obviously too busy traveling to Brussels and Hague even to take evidence from any of the victims, or their families, or their lawyers. Such cases as *Assange* or *Meizoso* are not mentioned at all in the report. The *Crete Five* is mentioned in two footnotes – as a positive example (because the suspects in that case were luckier than Symeou in that they were not locked in a Greek hell-hole prison, but released on bail). *Garry Mann* is only mentioned once as an example of injustice which the panel proposes to cure by extending the time limit for appeal from 7 days to 14 days. *Symeou* is mentioned once as a case cited in support of a *prima facie* case requirement; the panel noted the argument and happily ignored it, making no comment. *Turner and McGoldrick* is

mentioned briefly in one footnote at p. 279; again, the panel had no comment to make about it.

Putting this on one side, the report is manifestly not a result of any impartial review. It reads simply as a polemic advocating the status quo. It is full of general rhetoric about the importance of extradition as such, the public interest in efficiency and speed, rights of the victims, about mutual trust being vital for legal cooperation, that extradition is a two-way street and the UK also benefits from it, and other suchlike platitudes. That, as well as general Europhile rhetoric, are particularly dense in Chapter 5 which deals specifically with EAW.

In nearly every chapter, the panel repeatedly resorts to the notoriously dishonest statistical pseudo-arguments like this one: '*we were struck by the fact that out of the hundreds of cases that are dealt with by the courts each year, only a handful is relied upon as support for the contention that the existing law is defective*' (para 3.1). It is clearly unacceptable to use numerical arguments or phrases like "vast majority of cases" when we are talking about justice. A vast majority of all defendants are guilty, but this does not mean we should abolish courts and just imprison all accused persons.

Prima facie case requirement

There is only one plausible way to advocate the European Arrest Warrant – the classic propaganda technique of defending the indefensible. Like all great inventions, it is simple: keep a straight face and confidently utter a monstrous lie. The panel has succeeded in that, even if they failed everywhere else. The report keeps repeating in several places: '**No evidence was presented to us to suggest that European arrest warrants are being issued in cases where there is insufficient evidence.**' What about Symeou, the Crete Five, Meizoso, etc., etc.? My own submission to the panel included the evidence of many such cases, and I am sure that the other critics of the EAW did not fail to mention them in their own submissions.

This report has been written as a polemical piece; and yet, it is a very poor polemical piece simply because it does not answer the criticism. There are plenty of red herrings, such as the fascinating treatise on the history of extradition in chapter 3, which includes about every bit of criticism against the prima facie case requirement ever made anywhere in the world within the past three centuries. We learn that the French and the Spanish were particularly unhappy about it because much of the evidence used in continental courts would not be admissible under our law of evidence. That argument is hardly persuasive in itself: our rules of evidence were there as a safeguard of the rights of the suspect, and of course, it is entirely fair to ask the foreign prosecutors to satisfy the same requirements as we put to our own prosecutors. In any case, our law of evidence has been dramatically relaxed by now, and would no longer be such a great obstacle. Yet, the report keeps repeating this out-of-date argument like a mantra. Little wonder: they simply do not have a better argument against the *prima facie* case requirement.

Dual criminality

The EAW system has abolished the requirement of dual criminality as well as the one of a *prima facie* case. There is now a list of offences where dual criminality is not required. Some of them are extremely ill-defined – like 'racism and xenophobia', 'computer-related crime', 'corruption' or 'swindling'. Well, some might take the view that many members of both Houses of Parliament are 'corrupt swindlers', but under English criminal law they have nothing to fear until evidence has been gathered against them to justify their arrest and the laying of a criminal charge against them in a court of law. Not so with the EAW.

Effectively, any EU member-state can now criminalise a wide variety of conduct which is perfectly legal under our law, class it as 'fraud', 'rape', or 'racism and xenophobia', and get anybody extradited without any questions asked. The most notorious example of that is the case of **Julian Assange**. Mr Assange has been accused of acts that learned legal opinion in England says would not constitute a criminal offence under English law, and were he to be accused of them here they would not result in the laying of a criminal charge against him. Of course, there are widespread suspicions that the real reason for Mr. Assange's troubles are the revelations at his famous whistleblowing website Wikileaks. Again, however, our judges don't have to go into all this: the EAW form is filled in correctly, the 'rape' box has been ticked and so he must be extradited.

Without even mentioning Assange, Lord Baker's panel conceded the abolition of dual criminality is "controversial". And here is their answer to the controversy (para 5.205):

While we accept that harmonisation of the criminal law within the European Union has not taken place, and that significant differences exist in the Member States' substantive criminal law, the trend should be towards even greater cooperation in the suppression of crime. This is in the public interest and reinforces the rule of law: it is not in the interests of good order both within a State and internationally for crime to go unpunished as a result of movement across borders. Where foreign criminal law has been violated, and an overseas territory has suffered harm to its interests and citizens, it is no longer possible to view this with indifference on the basis that no interest of the executing territory has been affected. Wherever serious crime is committed it should not go unpunished... – etc., etc., etc.

The panel simply did not take any criticism seriously or attempt to answer it.

So much for human rights

As easily, the panel has waved off yet another major problem: the fact that torture and mistreatment of prisoners is widespread in many EU states, and so is corruption among the police and the judiciary. In theory, our judges must refuse extradition where there is evidence that it would be 'incompatible with the suspect's human rights' (section 21 of the Extradition Act). In practice, this safeguard turned out to be entirely bogus. There have been hundreds of cases where defendants objected to extradition on these grounds, bringing excessive evidence of human rights abuses – but **not a**

single case is known where such an objection succeeded. At least, my own efforts to find one such case have not succeeded; the report refers to '*only a limited number of cases*' but does not give any examples.

The trouble is that the interpretation of Section 21 by the courts has to take account of the '**underlying objectives**' of the EAW and that it is based on the EU doctrines of '**mutual trust**' and '**mutual recognition**'. That includes the presumption that the human rights of the suspect would be protected in any EU member-state just as well as they are protected in the UK – since all EU member-states have signed the European Convention on Human Rights. As Lord Justice Toulson said in the leading case *Targosinski v Judicial Authority of Poland*:

The framework of the European Arrest Warrant scheme is constructed on a basis of mutual trust between the parties to the Convention, all of whom belong to the Council of Europe. The starting point is therefore an assumption that the requesting state is able to, and will, fulfil its obligations under the Human Rights Convention.

It is not enough for a suspect to produce evidence that, for example, in Slovakia the judiciary is notoriously corrupt, the police mistreats prisoners as a matter of course, and pre-trial detention may take up to four years. He has to prove something that cannot be proven in principle – that his particular case will go to a corrupt judge, that he personally will be mistreated by the police and kept in jail for four years without a trial. So when Andrew Symeou's lawyers produced evidence that the conditions in Greek prisons were tantamount to systematic abuse and ill-treatment that was not good enough – and the judges sent Andrew to be remanded in a Greek hell-hole prison.

It is impossible to see how on earth a proper review could endorse the present situation as satisfactory without giving a full justification of what happened in Symeou case. Yet, the panel is doing exactly this. Their comments on this matter are simply outrageous: '*The cases in which this point has been raised have failed on their facts and it appears that the difficulty lies not with the application of the Article 3 [i. e. prohibition of torture and mistreatment] threshold, but with the inability of defendants to demonstrate that they will in reality suffer a violation of their human rights.*' To that, Lord Baker adds a charming footnote: '*Nor do we accept that this inability to establish prospective violations has anything to do with the difficulties of obtaining evidence from overseas territories.*' All these things are precisely what happened to Andrew Symeou, including the difficulties of getting evidence from Greece – but Lord Baker does not mention him. Instead, he cites some Trinidad and Tobago extradition case as an example of how well the system works.

How on earth can such things be written after the scandal of our courts sending an innocent man to spend a year in a Greek hell-hole prison? How on earth can Lord Baker write this insulting nonsense without being immediately forced to publicly apologise to the victims? We are now living in an Alice in Wonderland, Through an EU Looking Glass world, where words mean precisely what the promoters of ever closer European union in all things say they mean. Objective reality must not interfere.

Back to square one

The whole year while the government was waiting for the results of this review has simply been wasted. In the meantime, the EAW system has swallowed hundreds of new victims – many of them, no doubt, innocent. Having refused to treat this emergency as an emergency, the government decided to take the time for a full review. They have sacrificed the liberty of many of our countrymen to have it – and got nothing in return. Without exaggeration, the report has been simply a waste of time, money and paper. Frankly, had I been the one who commissioned it, I would simply refuse to pay to the researchers, and take them to court. **They had been commissioned to do a review, but have instead done a whitewash.**

The consequences of this will be tragic, as many more lives will now be ruined. There is no more time to lose. The government must now reject Lord Baker's conclusions and take its own urgent measures to protect the liberty of our countrymen.

It was, no doubt, a beautiful dream that Bulgarian and Romanian justice will, one day, reach such heights that life and liberty of British citizens could be confidently entrusted to it. This day has not come; and many of our countrymen have paid a terrible price for the utopian assumption to the contrary which has been enshrined in the present Extradition Act. It is now time to sober up.

What is needed is not just a reform or some additional safeguards, but an effective abolition of the 'EAW regime' in this country. We have to go back to a proper system of extradition, where the foreign extradition requests would be subjected to the usual scrutiny by the government and the courts.

To those who, like Lord Baker, say this cannot be done while we stay in the EU, the obvious answer is: well, in that case, here ends the debate over our EU membership. If being in the EU means exposing innocent British citizens to a risk of persecution, torture, or detention without charge or trial – then, hopefully, few would disagree that we have to be out. Surely, this is where we have to draw the line – if we are to draw it anywhere at all.

In reality, however, a unilateral opt out from the EAW scheme is possible even without a full withdrawal from the EU. The truth is that the EU needs us more than we need the EU. If we opt out of the EAW and make it very clear that this decision is not negotiable, the EU will have little choice but to acquiesce. Legally, all the EU can do is sue the UK in the 'European Court of Justice' for not implementing their 'Framework Decision'. In reality, if the government takes a firm stance on this issue, the EU is likely to refrain from stepping up the confrontation.

Therefore, what is necessary is very clear legislation to be enacted by Parliament, replacing the EAW with an Extradition Act that primarily protects the liberties and freedoms of British citizens. European Arrest Warrants should be treated as any other extradition requests. The traditional safeguards – **the requirement of *prima facie* case, dual criminality, and a workable human rights bar** – should be reintroduced as general principles of any extradition, subject to no exceptions whatsoever.

Alas, there is hardly much hope that the present government will do that, because it

is in thrall to the continuous 'integration and harmonisation' within the EU and 'ever closer union', including that of the EU's judicial systems. It is still faithful to the utopia of a 'European dream' – even though it is now pretty close to producing a Euro-Gulag nightmare.

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