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Extradition without justice

Gary McKinnon's fight to face trial in the UK casts a stark light on our unfair international extradition agreements

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Gary McKinnon's fight to be prosecuted in the UK casts a stark light on our extradition arrangements with America. US prosecutors are threatening him with up to 70 years in a "supermax" prison – and this a man with Asperger's syndrome who could hardly be less suited to such punishment.

But Britain's extradition arrangements beyond those with the Americans make for equally unhappy reading. The Extradition Act was passed in the aftermath of September 11 and much of its focus is on fast-track extradition of terror suspects. But as with other aspects of the "war on terror", the net result is damage to long-held principles of fairness and justice. Extradition arrangements are important. They ensure fugitives from justice do not escape prosecution for their crimes – and indeed this is required under human rights law. But it is vital that safeguards are in place.

Liberty believes, as did the UK parliament for many years, that no one should be extradited unless and until the requesting country makes out a basic case against them in a UK court. Failure on this front can result in an innocent person being sent halfway across the world – away from family, supporters and legal advisers – to face unsound, trumped-up or politically motivated charges, to say nothing of probable pre-trial imprisonment. This can and does happen under the European arrest warrant.

Even more worryingly, the home secretary has made orders dispensing with the requirement of a prima facie case in respect of over 20 other countries outside the European Union, including Azerbaijan, Georgia, Moldova, the Russian Federation and Turkey. Not only that, the European arrest warrant system, endorsed by parliament in the Extradition Act 2003, allows a person to be extradited to an EU country for something that may not be an offence in the UK provided the conduct fits within a broad list of 32 offences. While at first blush there seems no problem with extraditing someone for "murder", we might think differently if another country's laws define murder as including abortion.

Fast-track extradition is also provided for if the alleged offence is one of "racism or xenophobia", however this is defined by the requesting country. Many EU countries criminalise speech offences to an extent that the UK – with its history of a robust approach to freedom of expression – does not. Yet a UK court cannot bar extradition on the basis that it is not a crime recognised by UK law.

More and more cases are appearing of unfair extradition practices that demonstrate the very real problems with the current system. This is why Liberty has a new campaign, Extradition Watch, to fight the unfairness of the current system. Fast-track extradition purely on the basis of administrative convenience and efficiency is justice denied. There are very good historical reasons why extradition safeguards were developed and recent cases like those of McKinnon and Andrew Symeou (a young Briton who faces extradition to Greece on extremely flimsy evidence) show why these safeguards should still form part of UK law. Liberty and others propose amending UK extradition arrangements to reinstate these traditional safeguards.

We are yet to learn what the courts will decide in respect of McKinnon's last-ditch appeals. But it is certain that any legislative reforms will be too late to apply to his case. If this tragic case indicates the direction of travel for UK extradition law, we ignore the warning at our peril.

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