



JUSTICE

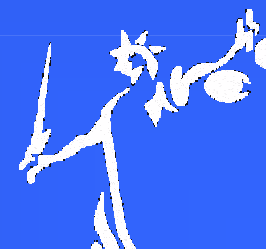
The European Arrest Warrant

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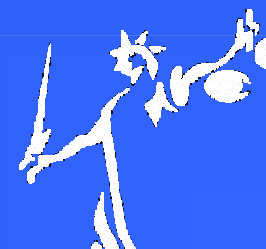
The Framework Decision

- The Council Framework Decision on the European Arrest Warrant and surrender procedures between Member States of 13th June 2002
- Framework Decisions are binding as to the effect to be achieved but leave the form and content to the Member State – Article 34 TEU
- Implemented in the UK by Part I Extradition Act 2003



The Framework Decision

- Ambitious instrument
- First fully utilised instrument within the area of criminal justice
- In force since 2004
- Although some constitutional problems at the outset, all 27 Member States now use



Features

- Role of executive replaced by judicial control
- Dual Criminality abolished for 32 offences

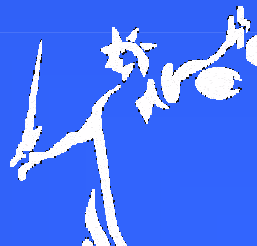
Where at accusation stage there is a maximum sentence of at least 3 years

Where at conviction stage there has been imposed a sentence of at least 4 months

- Specialty abolished

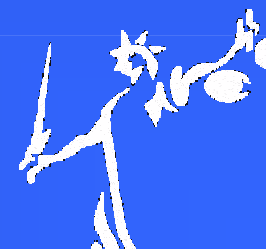
Where prior agreement between MS

- No refusal for own nationals
- No political offence exception
- Strict time limits 10 days with consent/ 60 contested



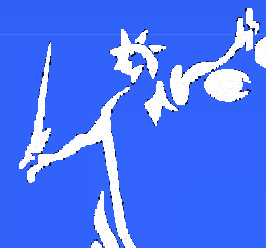
Statistics

- In 2007, 9,413 arrest warrants were issued by 18 MS
- Poland, Germany and France issued the most at 3,473, 1,785, and 1,028 respectively
- The UK received 1,274 in the fiscal year 2007/2008
- As of 27th August 2008 we had already received 1,255
- In 2007, 22% of those issued resulted in surrender



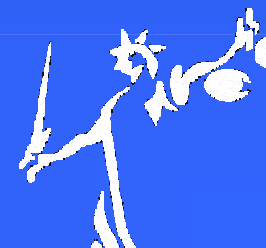
Issue

- When a MS issues an EAW it must use the pro forma annexed to the Framework Decision.
- The designated authority sends this to the requested MS, either by post, fax, email or via SIS or Interpol
- The requested MS then becomes the executing MS and has an obligation to locate and arrest the person named



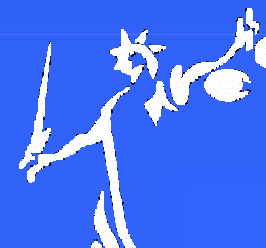
Extradition Act 2003

- Once the UK receives an EAW, it follows the EA 2003, Part 1
- SOCA is the UK designated authority
- Must be satisfied that the EAW has been issued by a judicial authority
- Must contain the correct details
- If so, certifies the EAW and circulates for arrest



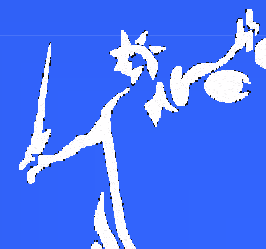
Extradition Hearing

- Arrest and detention/bail
- First appearance before DJ at Westminster Magistrates' Court
- Either consent/contest
- Adjourn for extradition hearing
- Go through stages in ss 10 - 25



Questions for Judge

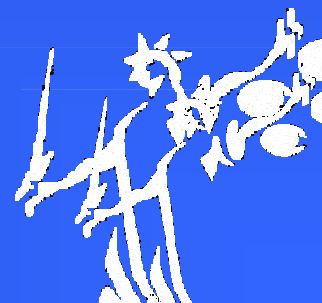
- | | |
|---------------------------|------------------------------------|
| 1. Extradition Offence? | No? – Discharge, Yes? – Qu. 2 |
| 2. Bar to Extradition? | No? – Discharge, Yes? – Qu. 3 |
| 3. Convicted? | No? - Qu. 7, Yes? - Qu. 4 |
| 4. In absence? | No? - Qu. 7, Yes? - Qu. 5 |
| 5. Deliberately absented? | No? - Qu. 6, Yes? - Qu. 7 |
| 6. Entitled to re-trial? | No? – Discharge, Yes? Qu. 7 |
| 7. Compatible with HR? | No? – Discharge,
Yes? Extradite |



Bars to extradition

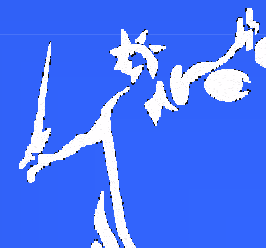
Section 11 Extradition Act:

- (a) the rule against double jeopardy;
- (b) extraneous considerations (race, religion, nationality, gender, sexual orientation, political opinions);
- (c) the passage of time;
- (d) the person's age;
- (e) hostage-taking considerations;
- (f) speciality;
- (g) the person's earlier extradition to the United Kingdom from another category 1 territory;
- (h) the person's earlier extradition from a non-category 1 territory.



Additional Considerations

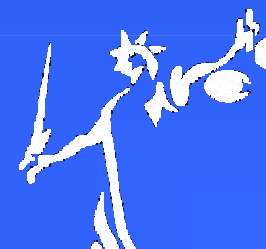
- Section 22, charged with offence/serving sentence in UK – grounds for adjournment
- Section 25, physical or mental condition – grounds for adjournment or discharge



Cases using Bars

Passage of time

- *Lisowski v Regional Court of Bialystok (Poland)* [2006] EWHC 3227 Admin
- *Oraczko v District Court of Krakow* [2008] EWHC 904 Admin
- *Louca v the Office of the Public Prosecutor in Bielefel, Germany, and others*, [2008] EWHC 2907 Admin
- *Jaworski v Regional Court Katowice, Poland* [2009] EWHC 858



Cases raising HR

Article 8

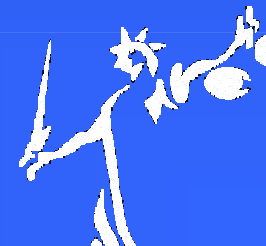
- *Slivka v District Court of Prague, Czech Republic* [2008] EWHC 595 Admin

Article 3

- *Ignaoua and others v the Judicial Authority of the Courts of Milan and others* [2008] EWHC 2619 Admin

Articles 3, 5 and 6

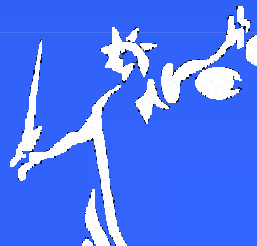
- *Jaso and Others v Spain* [2007] EWHC 2983 Admin
- *Famagusta District Court, Cyprus v Jason Wright and others*, 7 March 2007



Germany v Dr Frederick Toben,

19 October 2008

- Charge - alleged anti-Semitism and holocaust denial
- Disseminated through the internet
- One of 32 offences for which no dual criminality
- Request denied by District Judge Wickham:
Want of particularity as to the location and times of the offences.

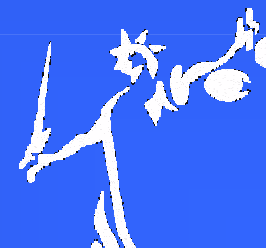


Mr Frederick Bloggs

A Bulgarian magistrate has issued a Eurowarrant for the return from the UK of Mr Bloggs in relation to alleged fraud.

You are called on duty scheme to police station/on first appearance in Mags.

Bloggs is a UK national. His instructions are that he is not guilty and that the case is a vendetta against him by a local mafia chief and he will not get a fair trial. Can he successfully refuse to go?



Bulgarian System

CRIMINAL PROCEDURE CODE

Promulgated State Gazette No. 86/28.10.2005, effective 29.04.2006

Article 12 – adversarial process. Parties to have equal procedural rights

Article 16 – presumption of innocence

Article 17 – no measures of coercion

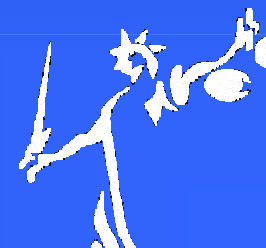
- police detention no more than 24 hours,
 - right to notify of detention
 - Ministry of Foreign Affairs informed where foreign national

Article 20 – Public hearing

Article 21 - Hearings conducted in Bulgarian, interpreter shall be appointed

Article 22 – Trial within reasonable period of time. Where D remanded in custody, case takes priority

Article 55 – right to mount a defence. Speaks last in trial.

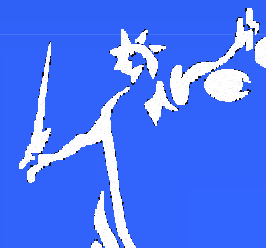


Bulgarian System

CRIMINAL PROCEDURE CODE

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- Article 56 – can be remanded. Must consider defence, family circumstances, health, occupation, age etc
- Article 57 – remand is to prevent absconding, committal of further crime, frustration of sentence
- Article 58 – signed promise (curfew), bail (surety), house arrest, remand in custody (crime punishable by detention and real risk of absconding/further offence due to previous) CTL – less than 2 yrs sentence = 2 mths, 2-5yrs sentence = 1 year, more than 5yrs = 2yrs.
- Article 67 – also not to contact victim or leave Bulgaria
- Article 71 – where fails to attend will be brought by compulsion, no trial in absentia

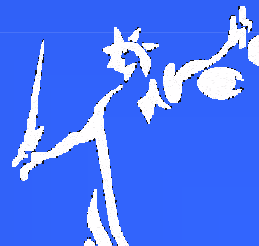


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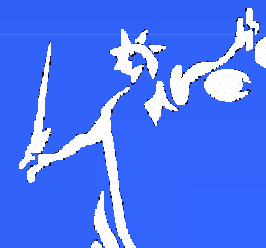
- Article 94 – defence rep. Mandatory where defendant does not have command of Bulgarian, under age, physical/mental deficiency, cannot afford to pay and interest of justice require. Is involved from pre-trial stage
- Article 103 – burden of proof on prosecution, no inference from silence
- Article 142 – translator will be appointed for interrogation



Consider Defence

How are you going to prevent his extradition?

- What if there had been threats made by the 'mafia'
- What if his instructions were that the 'mafia' were paying off the police and the local Magistrate?
- What other scenarios might save him?



Future criminal cooperation in EU

- Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions,
- Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
- Proposal for a Council Framework Decision on the European supervision order in pre-trial procedures between Member States of the EU, COM/2006/0468 final

