

The 2017 Oxford Conference on International Extradition and the European Arrest Warrant

University of Oxford, Worcester College, England, 4-5 September 2017



eucrim

European Law Forum: Prevention • Investigation • Prosecution

Report

Stefano Maffei

Academic and practising lawyers from around the world gathered in Oxford, England to brainstorm on current developments in extradition law in several countries, including the UK, Canada, Australia, Germany, and Switzerland. A poll of participants indicated that virtually all attendees considered the two-day conference a “complete success,” according to *Cristina Saenz Perez*, University of Leicester.

The second edition of the global conference on International Extradition and the European Arrest Warrant (see eucri m 3/2016, pp. 132-133 for the first edition) attracted experts from the United States, Canada, Australia, Singapore, the United Kingdom, and Continental Europe. High on the agenda was an examination of the comparative practice of extradition in several jurisdictions, the current state of the European Arrest Warrant (EAW) mechanism, and the consequences of Brexit for extradition rules in the UK.

Over the course of two days, the seminar sessions covered theory and practice regarding a number of domestic extradition laws. Note was taken that few universities, law societies, and bar associations around the world focus on extradition as an independent area of legal practice. No university in the world offers *ad hoc* programmes on international extradition. As a result, with the exception of the UK, no established class of extradition lawyers exists in most countries.

The seminar began with a comprehensive analysis of extradition law and court procedure in Germany by extradition expert *Thomas Wahl* from the Max Planck Institute for Foreign and International Criminal Law. He also discussed the current controversial issue of whether the constitutional ban not to extradite German nationals must be extended to *Union citizens*. The controversy ensued after the European Court of Justice’s judgment in *Petruhhin* and the recent request for a preliminary ruling by the Regional Court of Berlin in the *Pisciotti* case. In addition, he commented on the recent case law of the Federal Constitutional Court as regards the refusal ground of “*ordre public*.” He referred to the famous ruling of 15 December 2015, which opened “Pandora’s box” for defence lawyers to attack surrender requests by arguing that the law of another EU country is not in line with parallel German concepts. *Wahl* noted that the Court did a U-turn when it recently concluded that the drawing of negative inferences from the accused’s silence under English law does not hinder his/her surrender to the UK.

AUTHOR

Stefano Maffei

Senior lecturer in Criminal Procedure, expert in Human Rights, criminal justice and extradition
Università di Parma

Published in
2017, Vol. 12(3) eucri m
ISSN: 1862-6947
<https://eucri m.eu>



UK barrister *Mark Summers QC* of Matrix Chambers – who appears on a regular basis in extradition cases, including *Assange v. Sweden* in 2012 – outlined similarities and differences in the reading of EAW provisions (such as the definition of judicial authority, the issue of *res judicata*, and the effectiveness of summons) by the Court of Justice of the European Union and the UK Supreme Court. “Although several major differences persist, on several occasions the ECJ has often reached, over time, the very same conclusions of the UK courts,” said *Summers*. “On the domestic front, the last decade shows a fascinating and difficult tension between pro-surrender courts and a Parliament sceptical of, and determined to lessen the impact of this European mechanism.”

British solicitor *Rebecca Niblock*, co-author of the leading textbook “Extradition Law” (published by LAG, now in its 2nd edition) focused on the issue of bail and detention in EAW cases, especially in instances where other less intrusive alternatives are possible. *Niblock* also informed participants about the newly established association DELF – Defence Extradition Lawyers’ Forum. “DELF aims to represent defence lawyers practising in extradition by creating best working practices,” said *Niblock*.

An entire session was chaired by *Dr. Gary Botting*, a Canadian barrister and published expert on extradition law, who presented the documents that lawyers are given in Canada when a person is arrested in an extradition case, including the so-called “authority to proceed” or the “record of the case.” *Botting* illustrated the enormous challenges faced by lawyers defending extradition cases in Canada these days, as the discovery of information is truly minimal. He also reported on developments in the *Hassan Diab* case, which concerns a Canadian academic who was wrongly extradited from Canada to France in 2014.

Swiss lawyers *Gregoire Mangeat* and *Alice Parmentier* reported on the extradition rules in Switzerland. “In 2016 Switzerland requested the extradition of 282 individuals, and received requests for 372. These figures are in line with the practice of the last 5 years,” said *Mangeat*, who recently served as counsel in the FIFA case in which a number of officials were requested by the USA. “The practice of Swiss courts shows how difficult it is to secure a refusal of extradition, even when the issue of poor prison condition or inhumane treatment is raised by the suspect or defendant.”

Australian lawyer Prof. *Ned Aughterson* then highlighted the peculiarities of the “unduly complex” Australian procedure of extradition, drawing parallels with bilateral extradition practice in the United States and Canada. “The proceeding is unquestionably administrative,” argued *Aughterson*, “and bail is very rarely granted, pending the extradition proceeding.”

The third International Extradition Conference will be held in Northern Italy at the end of June 2018. All those interested should email the organisation team at stefano.maffei@gmail.com

About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



Co-funded by
the European Union