

# FACTSHEET

## Extradition and 'International' Arrest Warrants



Prisoners Abroad, 89 – 93 Fonthill Road  
London, N4 3JH, United Kingdom  
Tel 020 7561 6820 Fax 020 7561 6821  
info@prisonersabroad.org.uk www.prisonersabroad.org.uk  
Charity Number 1093710

This factsheet gives an introduction to the subject of extradition, and how international treaties and agreements govern its use. Laws surrounding extradition will differ from State to State, and this factsheet does not contain detailed information about the extradition rules for any particular country. **If you are subject to an extradition request it is strongly advised that you seek specialist legal assistance.**

### Contents

1	What is extradition?	2
2	Common themes	2
2.1	Double jeopardy	3
2.2	Dual criminality	3
2.3	Political offences	3
2.4	Speciality	3
2.5	Standard of proof	4
2.6	Death penalty	4
2.7	Torture	5
2.8	Unfair trial	5
3	Extradition without an extradition treaty – <i>ad hoc</i> arrangements	5
4	Extradition Procedures and Proceedings	6
4.1	Will the extradition be reviewed by a Court?	6
4.2	Is there a possibility of appeal?	6
4.3	Does the right to a fair trial apply?	6
4.4	Detention pending consideration of an extradition request	7
4.5	Timescales	7
4.6	Consent	7
5	The European Arrest Warrant Scheme	7
5.1	How do you find out if you are subject to a European Arrest Warrant?	9
6	Commonwealth Extradition Scheme	9
7	'International' Arrest Warrants	10
7.1	How do you find out if you are subject to an 'international' arrest warrant?	11
7.2	Is it possible to challenge an Interpol Red Notice?	11
8	Resources	11
8.1	Books	11
8.2	Internet sites	12

## **1 What is extradition?**

Extradition is a legal process by which a person suspected or convicted of a criminal offence is transferred from one country to another for the purposes of prosecution, or to serve a sentence already imposed.

There are three main parties in an extradition:

- 1) the country which has made the extradition request (the 'requesting' State);
- 2) the country which has been asked to extradite a person on their territory (the 'requested' State); and
- 3) the person whose extradition is sought (the 'subject').

It is generally accepted that countries have no general obligation to surrender a person who is within their territory. Because of this, many countries have signed bilateral (between two countries) and multilateral (between several countries) extradition treaties agreeing to transfer 'fugitive offenders' in certain circumstances. States also use non-binding schemes and agreements for the same purpose. Extradition may still be possible even where there is no treaty or agreement between two countries, but this will depend on the law of the requested State (see section 3).

Extradition is regulated by domestic and international law and non-binding agreements; the exact procedure for an extradition request to be considered and for an individual to be extradited will depend on both the law of the requested State and the terms of the relevant extradition treaty / agreement. **It is therefore important that a person facing extradition obtains legal advice from a lawyer qualified in the requested State who has knowledge of extradition law.**

## **2 Common themes**

Most countries have extradition arrangements with at least some other countries. The UK currently has extradition arrangements with over 100 countries, either through bilateral extradition treaties, the European Arrest Warrant Scheme, or the London Scheme on Extradition within the Commonwealth.

One of the most important aspects of an extradition treaty is the determination of those offences for which extradition is possible. There are two main types of extradition arrangements; those that rely on lists, and those that follow the principle of 'dual criminality'. The former specify a list of crimes for which extradition is possible; the latter usually specifies that extradition will be possible if the act is an offence in both the requesting and requested state *and* is punishable by a minimum period of imprisonment (often one year) in both countries. Dual criminality agreements are more flexible than list agreements, and are seen in most recent extradition treaties.

The content of an extradition treaty / arrangement varies. However, there are some common clauses that can be found in many extradition treaties and arrangements<sup>1</sup>. These are explained below.

---

<sup>1</sup> Note that these clauses will not be present in all extradition treaties and agreements.

## **2.1 Double jeopardy**

Many contain a provision that deals with the issue of 'double jeopardy' (also known as *ne bis in idem*). This principle essentially means that a person should not be tried or punished twice for the same offence. This means that extradition for the purpose of prosecution can or should be refused if the subject has already been tried or punished for the offence (whether in the requesting State, requested State or a third country). The rule applies whether or not the subject was found guilty or acquitted in the earlier trial.

It is important to be aware that domestic law on double jeopardy varies between countries. There may be exceptions allowing for the re-trial of a person that has been acquitted (for example if new evidence is discovered), or an opportunity for the prosecution to appeal an acquittal to a higher Court.

## **2.2 Dual criminality**

Another common clause relates to the 'dual criminality' rule, which means that the subject can only be extradited if the offence for which their extradition is sought is an offence in both the requesting and requested State. The reasoning behind the provision is that the requested State should be able to refuse to extradite if they do not view the conduct of the subject as a criminal act.

A number of the more recent extradition treaties and agreements, including the European Arrest Warrant Scheme (see section 5) have abolished the dual criminality requirement for certain serious, terrorist, international, and 'organised crime' offences.

## **2.3 Political offences**

The political offences exception holds that a person cannot be extradited for an offence of a political character. The term 'political offence' is not clearly defined under international law; whether an offence is of a political nature is therefore likely to depend on the domestic law and courts of the requested State. It is generally accepted that acts of terrorism do not fall under the exception, even if they were committed with a political motive. In practice this exception is now rarely used; when it is, the issue of political asylum may also arise.

Similarly, extradition instruments often provide that a person should not be extradited if they are facing prosecution on account of their race, religion, nationality, gender, sexual orientation or political opinions, or if they may be prejudiced at trial for any of these reasons. Again, such grounds may also raise the issue of political asylum.

## **2.4 Speciality**

The principle of speciality provides that once the subject is transferred to the requesting State, they cannot be tried for an offence different from (or in addition to) the one for which they were extradited, without first obtaining the permission of the requested State. Some treaties will provide that it does not breach the principle of speciality to try someone for an offence which is not punishable by imprisonment.

After their surrender, the subject can expressly waive the rule of speciality and be tried for further offences that may attract a punishment of imprisonment. In addition, the requested State can agree to the subject being tried for other offences.

## 2.5 Standard of proof

The standard of proof necessary for an extradition request to be approved will depend on the relevant extradition treaty / agreement and the domestic law of the requested State. The UK requires a different standard of proof for different categories of requesting State. For example, if the request comes from a State that operates under the European Arrest Warrant Scheme (see below) the requested State merely needs to show that there is a valid arrest warrant issued by the requesting State which includes; details of other outstanding warrants, the subject's identity, the alleged offence (facts and law), and the sentence which may be imposed. The warrant also needs to include a statement confirming it has been issued with a view to the individual's arrest and extradition for the purpose of being prosecuted or subject to the execution of a custodial sentence or detention order. If the subject has already been convicted, the statement needs to confirm they are alleged to be unlawfully at large, and the particulars of the sentence.

For most countries that are included in the Commonwealth Scheme (see below), the European Convention on Extradition (which preceded the EAW) or with which the UK has a bilateral extradition treaty, courts in England and Wales will require *prima facie* evidence (i.e. evidence that sufficiently proves a case in the absence of contrary evidence) of guilt before agreeing to extradition. Some countries, however, are exempt from this requirement<sup>2</sup>.

## 2.6 Death penalty

If the extraditable offence potentially attracts the death penalty, most countries that prohibit capital punishment will refuse to extradite *unless* they receive assurances that the subject will not be sentenced to death or, if imposed, the death penalty will not be carried out. Such assurances are specifically required in a number of extradition treaties and domestic legislation, and also follow from some State's obligations under separate human rights treaties. An example of the latter is the Sixth Protocol to the European Convention on Human Rights (ECHR), which abolishes the death penalty in all States that have ratified the treaty; those States (such as the UK) cannot extradite subjects to a country where they may be sentenced to death or executed. Similarly, States that have ratified the ECHR (but not the Sixth Protocol) would also need to take account of case-law from the European Court of Human Rights which, amongst other things, confirms it may not be possible to extradite subjects to a country where there is a real risk they will be subject to death row conditions that are inhuman and degrading<sup>3</sup>, or sentenced to death after an unfair hearing<sup>4</sup>. Subsequently, no Member State of the Council of Europe has extradited a subject to a country where they may be executed – without first obtaining assurances – since 1989<sup>5</sup>.

---

<sup>2</sup> As of 1 January 2007, these countries were Albania, Andorra, Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Georgia, Iceland, Israel, Liechtenstein, Macedonia FYR, Moldova, Montenegro, New Zealand, Norway, Russian Federation, Serbia, South Africa, Switzerland, Turkey, Ukraine and the United States of America. See the Home Office website: <http://police.homeoffice.gov.uk/operational-policing/extradition-intro1/extrad-part-2>

<sup>3</sup> See *Soering v. UK* (1989) 11 EHRR. 439. Decisions of the European Court of Human Rights (and the now defunct European Commission on Human Rights) can be found on their website, at:

<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>. It is however worth noting that in extradition cases, treatment considered inhuman or degrading in the requested State may not in all cases prohibit extradition to the requesting State. For further discussion on this point, see the recent House of Lords case, *R (On the Application of Wellington) v SSHD* [2008] UKHL 72.

<sup>4</sup> See *Ocalan v. Turkey* (2003) 37 EHRR 10.

<sup>5</sup> This was when the *Soering* judgment was handed down by the European Court of Human Rights.

## 2.7 Torture

As mentioned above, it will also be a violation of the prohibition on torture to extradite a person to a country where they face a real risk of such treatment. This is provided for under a number of international human rights treaties (directly or indirectly), including the UN Convention against Torture (CAT)<sup>6</sup>, the European Convention on Human Rights (ECHR)<sup>7</sup>, and the International Covenant on Civil and Political Rights (ICCPR)<sup>8</sup>. The requesting State may (and will sometimes be under a legal obligation to) refuse extradition where there is such a risk. More widely, in certain cases extraditing a person to a country where there is a real risk they may be subject to inhuman or degrading treatment / punishment may also be prohibited<sup>9</sup>. Issues that may need to be considered when reviewing the risk include the possibility of corporal punishment, and prison conditions within the requesting State.

## 2.8 Unfair trial

Extradition can (and in many States must) be refused on the grounds that the subject will not receive a fair hearing in the requesting State. For example, Article 6 of the ECHR protects the right to a fair hearing, and the European Court of Human Rights has previously confirmed that where there is a real risk the subject will suffer a 'flagrant' breach of their right to a fair hearing in the requesting State, extradition should not be allowed<sup>10</sup>. Extradition may therefore be prohibited where the subject has been tried in *absentia* in the requested State (having not deliberately absented themselves), unless the reopening of the case is available<sup>11</sup>.

## 3 Extradition without an extradition treaty – ad hoc arrangements

In some cases, a requested State will consider a request for extradition from a requesting State with which it does not have formal extradition arrangements. This is often known as *ad hoc* extradition. Whether *ad hoc* extradition is possible will depend on the domestic law of the requested State. Even if an extradition request is made without an applicable extradition treaty in place, it must be conducted in accordance with the domestic law of the requested State. In the UK, the 2003 Extradition Act allows for *ad hoc* arrangements to be made for the extradition of a specific person to a country with which the UK has no formal extradition arrangement. However, this provision is rarely used<sup>12</sup>.

---

<sup>6</sup> Article 3(1) of CAT reads: "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

<sup>7</sup> Article 3 of the ECHR states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

<sup>8</sup> Article 7 of the ICCPR states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment..." The Human Rights Committee (the treaty monitoring body of the ICCPR) has confirmed the prohibition on torture and inhuman/degrading treatment applies in extradition cases: "In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end". ICCPR General Comment 20 (Forty-fourth session, 1992): Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment, A/47/40 (1992) 193 at para. 9.

<sup>9</sup> See footnote 3, above.

<sup>10</sup> Again, see *Soering v. UK* (1989) 11 EHRR. 439, at para. 113.

<sup>11</sup> See *Stoichkov v. Bulgaria* (24/06/05) Application 9808/02, para. 53-8.

<sup>12</sup> Section 194 of the UK Extradition Act 2003, available on the Home Office website: <http://police.homeoffice.gov.uk/publications/operational-policing/extradition-act-2003>

## **4 Extradition Procedures and Proceedings**

The procedure and requirements for extradition from the UK are primarily regulated by the Extradition Act 2003. The procedure in other countries will be determined by the domestic law of that State.

### **4.1 *Will the extradition be reviewed by a Court?***

In most States, an extradition request will initially be decided by the courts of the requested State. In some States, the executive branch (often a Government Minister) will have the final say on whether an extradition goes ahead. They may or may not be bound by the Court's decision. In some States, the executive will be bound by the Court's decision if extradition is refused; if it is granted they are still able to use their discretion to refuse extradition. Advice on local law should therefore be taken from a lawyer in the requested State.

In the UK, the executive plays no role in extradition requests made under the European Arrest Warrant Scheme. However, in all other requests, if the courts agree to extradition, the case is then sent to the Home Secretary who can refuse extradition on a number of limited grounds, namely if:

- 1) There are insufficient assurances that the death penalty will not be carried out;
- 2) The principle of speciality is violated (see section 2.4);
- 3) The subject was previously extradited to the UK from the requested State;
- 4) The subject has been charged or serving a prison sentence in the UK;
- 5) Two States have requested the subjects' extradition;
- 6) There are national security grounds<sup>13</sup>.

### **4.2 *Is there a possibility of appeal?***

In most States, including the UK, the decision on whether to extradite someone can be appealed to a higher Court. Again, appeal procedures and requirements will vary from State to State.

### **4.3 *Does the right to a fair trial apply?***

Many of the traditional 'fair trial' rights protected under international human rights law do not appear to apply to proceedings *in the requested State* where the issue of extradition is determined. This is because such rights normally only apply in cases where 'criminal charges' or 'civil rights / obligations' are determined. The European Court of Human Rights has taken the view that extradition proceedings cannot be properly categorised as those which determine criminal charges or civil rights / obligations within the meaning of Article 6 of the European Convention on Human Rights (i.e. the right to a fair trial)<sup>14</sup>. Similarly, the Human Rights Committee (the treaty monitoring body of the International Covenant on Civil and Political Rights), has also found that extradition cases do not amount to the determination of a criminal charge within the meaning of Article 14 of the ICCPR (which also protects the right to a fair hearing)<sup>15</sup>. The Committee has however noted that where extradition requests are dealt with by the judiciary, principles of impartiality, fairness and equality should be respected<sup>16</sup>.

---

<sup>13</sup> See Section 93 of the Extradition Act 2003 for further details.

<sup>14</sup> See *H v. Spain* (1983) 37 DR 93.

<sup>15</sup> *Everett v. Spain* (961/2000), A/59/40 vol. II (9 July 2004) 436.

<sup>16</sup> See above footnote.

As outlined above, the right to a fair trial may however be relevant in extradition cases where there is a real risk of a breach *in the requesting State*.

#### **4.4 Detention pending consideration of an extradition request**

Providing certain procedures are followed, it is generally legitimate for the requested State to detain the subject of the extradition request whilst proceedings are underway<sup>17</sup>. This is an exception to the right to liberty. Unless a subject is detained on the basis of a European Arrest Warrant, how long they can be detained for whilst an extradition request is determined will depend on the domestic law of the requested state, and their obligations under human rights treaties. Non-European Arrest Warrant extradition proceedings can be lengthy. (See section 5 for details of the European Arrest Warrant scheme.)

#### **4.5 Timescales**

The extradition treaty / agreement and the domestic law of the requested State will set out any time limits within which information must be received or within which extradition must be ordered. Often, extradition treaties state that if enough information is not received, the requested State can ask the requesting State for further information within a specified time period (this is possible under the Commonwealth Scheme, discussed below). This may increase the length of time that extradition proceedings can take.

#### **4.6 Consent**

Many extradition treaties and agreements allow the subject to waive their right to a hearing, and consent to return to the requesting State.

### **5 The European Arrest Warrant Scheme**

The EU Framework Decision on the European Arrest Warrant Scheme came into force on 1 January 2004 and has been operational throughout the whole of the EU since May 2005<sup>18</sup>. Under the Scheme, States agree to arrest and surrender individuals to a requesting State for the purpose of prosecuting or subjecting them to a custodial sentence or detention. The Scheme replaces previous extradition treaties and agreements between EU Member States, and establishes a simplified procedure with strict time limits. The requested State must make a final decision on the request within 60 days of the initial arrest, or ten days from the time the subject has given their consent. The deadline may be increased by a further 30 days in certain cases. The Scheme also removes executive oversight from extradition decisions; the final decision is therefore always made by a Court.

As mentioned above, the 'Dual criminality' rule seen in a number of extradition agreements and treaties has been relaxed in the EAW Scheme, where it is not necessary for 32 categories of offences<sup>19</sup>, in particular, those involving serious, terrorist

---

<sup>17</sup> This is certainly the view taken by the European Court of Human Rights; see *Quinn v France* (1995) 21 EHRR 529.

<sup>18</sup> Some EU member States incorporated the Framework into domestic law prior to this. Until 25 January 2006, the EAW Scheme was only partially implemented in Germany. See C. Nicholls, C. Montgomery, and J. Knowles, *The Law of Extradition and Mutual Assistance* (2007), Oxford University Press, p.244.

<sup>19</sup> See Article 2(2) of the European Arrest Warrant Framework Decision; participation in a criminal organization; terrorism; trafficking in human beings; sexual exploitation of children and child pornography; illicit trafficking in narcotic drugs and psychotropic substances; illicit trafficking in weapons, munitions and explosives; corruption; fraud, including that affecting the financial interests of the European Communities

or organised crime, where the offence is punishable by a maximum period of at least three years' imprisonment in the requesting state. For offences outside the list, dual criminality may be required, with a maximum of at least one year's imprisonment, or four months where a sentence has already been passed.

Under the Scheme, requested States *must* refuse to surrender where;

- 1) The subject is covered by an amnesty (in the requested State);
- 2) They would be subject to double jeopardy (see above); or
- 3) They are too young to be held criminally responsible for the extradition offence in the requested State.

Requested States *may* also refuse to surrender if;

- 1) The offence is not an offence in the requested State (unless it is one of the 32 offences listed above);
- 2) The subject is being prosecuted in the requested State for the same offence as extradition is sought;
- 3) The requested State has decided not to prosecute the subject for the same offence, or decided to halt proceedings, or has already prosecuted the subject and handed down a final judgement;
- 4) The subject can be prosecuted in the requested State for the offence, but for being statute-barred (i.e. limitations on the time someone can be prosecuted);
- 5) The subject has been finally judged by a third State for the same offence and, if sentenced, has completed or is currently serving that sentence or the sentence can no longer be executed;
- 6) Extradition is sought for the execution of a sentence, and the subject is a national / resident of the requested State and that State agrees to execute the sentence;
- 7) Where the offence is deemed to have been committed (partially or fully) in the requested State, or was committed outside the requesting State and their law prohibits prosecution for the offence unless it took place on their territory.

More widely, paragraph 12 of the Framework Decision confirms the Scheme respects fundamental rights, and as such, States are not prohibited from refusing to surrender someone where there are reasons to believe the EAW has been issued *"...for the purpose of prosecuting or punishing a person on the grounds of his or her sex, nationality, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that a person's position may be prejudiced for any of those reasons"*.

The Scheme has been incorporated into EU member States' domestic legislation in a number of different forms; the Scheme was introduced into UK domestic law by way of the Extradition Act 2003.

---

within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests; laundering of the proceeds of crime; counterfeiting currency, including of the euro; computer-related crime; environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties; facilitation of unauthorized entry and residence; murder; grievous bodily injury; illicit trade in human organs and tissue; kidnapping, illegal restraint and hostage-taking; racism and xenophobia; organised or armed robbery; illicit trafficking in cultural goods, including antiques and works of art; swindling; racketeering and extortion; counterfeiting and piracy of products; forgery of administrative documents and trafficking therein; forgery of means of payment; illicit trafficking in hormonal substances and other growth promoters; illicit trafficking in nuclear or radioactive materials; trafficking in stolen vehicles; rape; arson; crimes within the jurisdiction of the International Criminal Court; unlawful seizure of aircraft/ships; sabotage.

## 5.1 How do you find out if you are subject to a European Arrest Warrant?

Unlike the Red Notice scheme (see section 7), there is no website or public database which members of the public can access to find out if there is an EAW outstanding against them. Because of this, the only way to challenge an EAW appears to be through court proceedings in the requested State, once an EAW has been issued.

## 6 Commonwealth Extradition Scheme

The 'London Scheme on Extradition within the Commonwealth' (amended in 2002)<sup>20</sup> sets out a framework for the extradition of individuals between Commonwealth Countries<sup>21</sup>.

Under the London Scheme, extradition is possible for offences punishable in both the requesting and the requested State (the 'dual criminality' rule) by imprisonment for two years or more. This includes crimes of a fiscal nature and crimes committed outside the requesting State that are extraditable offences in the requested State.

A court in the requested State may order extradition if provided with *prima facie* evidence that the person committed the offence, and extradition is not precluded by law. States within the Commonwealth can however agree a lower standard of proof between themselves, namely where the record of the case is *sufficient* to warrant a trial, and extradition is not precluded by law.

Extradition is precluded by law where the offence is

- 1) Of a political character<sup>22</sup>;
- 2) The aim of the extradition is in fact to prosecute or punish the subject because of their race, religion, sex, nationality or political opinions;
- 3) The speciality rule applies (see section 2.4); or
- 4) The subject has already been tried or punished for the same offence (the 'double jeopardy' rule).

The following categories also preclude extradition where it would be unjust / oppressive or too severe a punishment to be extradited, due to;

- 1) The trivial nature of the case;
- 2) The accusation not being made in good faith or in the interests of justice;
- 3) The passage of time since the commission of the offence; or
- 4) Any other sufficient cause.

---

<sup>20</sup> Formerly known as the 'The Scheme Relating to the Rendition of Fugitive Offenders within the Commonwealth' or 'The London Scheme'.

<sup>21</sup> At the time of writing, the following countries were members of the Commonwealth of Nations: Antigua and Barbuda; Australia; Bahamas; Bangladesh; Barbados; Belize; Botswana; Brunei; Cameroon; Canada; Cyprus; Dominica; Gambia; Ghana; Grenada; Guyana; India; Jamaica; Kenya; Kiribati; Lesotho; Malawi; Malaysia; Maldives; Malta; Mauritius; Mozambique; Namibia; Nauru; New Zealand; Nigeria; Pakistan; Papua New Guinea; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Samoa; Seychelles; Sierra Leone; Singapore; Solomon Islands; South Africa; Sri Lanka; Swaziland; Tanzania; Tonga; Trinidad and Tobago; Tuvalu; Uganda; United Kingdom; Vanuatu; Zambia.

<sup>22</sup> The following crimes however do not benefit for the political offence exception: 1) those that aim to prevent or repress specific offences, which both the requesting and requested State are under an obligation to prosecute or extradite; 2) those deemed not to be of a political nature in domestic law, including an offence against the life or person of a Head of State/Head of Government/ Minister of Government, and murder.

There are also a number of discretionary grounds for the refusal of extradition;

- 1) Where the subject has been tried in *absentia*<sup>23</sup>;
- 2) The offence was committed outside of the requested and requesting State and the law of the requested State doesn't allow it to exercise jurisdiction over the given offence;
- 3) The subject has become immune from prosecution or punishment in the requested State;
- 4) The offence is only prohibited under military law / obligations.

Further discretionary grounds – such as refusing to extradite where the requesting country may impose the death penalty – are also available to States that implement the Scheme.

Within 15 days of the court decision to extradite the subject or rule on a petition of *Habeas Corpus* (whichever date is later), the relevant executive authority must order extradition unless it is precluded by law or should be refused, in which case the person should be released.

If the subject has not been extradited within two months from initially being detained, or one month after the date the extradition order was made (whichever is specified in the domestic law of the requested State), the subject can apply for a discharge. If no sufficient cause can be shown for the delay, the subject should be released.

## **7 'International' Arrest Warrants**

Outside of the European Arrest Warrant Scheme, there is no such thing as an international arrest warrant. The closest thing available today is an Interpol 'Red Notice' through which States seek the arrest or provisional arrest of wanted persons overseas, with a view to extradition.

An Interpol Red Notice is not an international arrest warrant but merely a means of streamlining co-operation between Interpol member countries<sup>24</sup> on the arrest and extradition of fugitive offenders. A Red Notice is essentially a notification that a valid arrest warrant exists in the country that is seeking the apprehension of the fugitive.

If a State is seeking a person for trial or to serve a sentence, and the individual is believed to have fled overseas, that State can request Interpol to issue a Red Notice which is then circulated to Interpol member countries. If the wanted person comes to the attention of the police in another State, they inform Interpol, who in turn inform the requesting State, which can then request provisional arrest or file a request for extradition. Once this has been done, the request is treated like any other extradition request.

An Interpol Red Notice may not in itself allow the police to arrest the wanted person. This depends on the domestic law of the State on whose territory the wanted person is

---

<sup>23</sup> Specifically, the subject would also need to show they had no legal representation at the trial in *absentia*, or that their legal representative was not allowed to participate in the proceedings. Trials in *absentia* are not uncommon in counties with civil law systems. See the Prisoners Abroad Factsheet, 'Trials in *absentia*' [http://www.prisonersabroad.org.uk/Downloads/Factsheets/Trials\\_in\\_absentia.pdf](http://www.prisonersabroad.org.uk/Downloads/Factsheets/Trials_in_absentia.pdf)

<sup>24</sup> There are 187 Member States; see <http://www.interpol.int/Public/ICPO/Members/default.asp>

found. In some States, the domestic courts will have to issue a domestic arrest warrant pursuant to the extradition request / Interpol Red Notice before the police can effect an arrest. Other States, however, view an Interpol Red Notice as a valid request for provisional arrest, and will not necessarily have to issue a domestic arrest warrant before an arrest can be made<sup>25</sup>. Sometimes, a request for provisional arrest can be sent alongside the Red Notice.

Under the Commonwealth Scheme, Interpol notices may on their own be sufficient (or may be considered alongside other information) in deciding whether to issue a provisional arrest warrant.

Although national police in the requested State may receive a wanted notification via Interpol, it is then up to them to decide whether to trace the individual and / or put them under surveillance or arrest. A Red Notice does not oblige the requested State to monitor or arrest the individual.

### **7.1 How do you find out if you are subject to an 'international' arrest warrant?**

Interpol publishes a small proportion of all Red Notices on their website, at [www.interpol.int](http://www.interpol.int).

### **7.2 Is it possible to challenge an Interpol Red Notice?**

An Interpol Red Notice is only issued at the instigation of a member country. Interpol will not issue a Red Notice if it is not compatible with Article 3 of Interpol's constitution which states that it is '*strictly forbidden for the organization to undertake any intervention or activities of a political, military, religious or racial character*'. The subject of the Red Notice may challenge the notice if they believe that it contravenes Article 3.

There appear to be no other grounds on which the subject can challenge the Red Notice directly with Interpol. The subject will have to challenge the state which requested the Red Notice and issued the domestic arrest warrant.

## **8 Resources**

The above information has been gathered from a number of resources, including the following:

### **8.1 Books**

C. Nicholls et al: *The Law of Extradition and Mutual Assistance* (2007) 2<sup>nd</sup> Ed. Oxford University Press.

J. Jones & A. Sambei, *The Extradition Handbook* (2005) Oxford University Press.

K. Starmer, *European Human Rights Law: The Human Rights Act 1998, and the European Convention on Human Rights* (1999) 1<sup>st</sup> Ed. Legal Action Group.

R. Cryer et al, *Introduction to International Criminal law and Procedure: Principles, Institutions* (2007) Cambridge University Press.

S. Joseph et al, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (2005) 2<sup>nd</sup> Ed. Oxford University Press.

---

<sup>25</sup> About one third of Interpol Member countries appear to view Interpol Red Notices as a valid request for provisional arrest.

## 8.2 Internet sites

EU, 'European Arrest Warrant Replaces Extradition between EU Member States':  
[http://ec.europa.eu/justice\\_home/fsj/criminal/extradition/fsj\\_criminal\\_extradition\\_en.htm](http://ec.europa.eu/justice_home/fsj/criminal/extradition/fsj_criminal_extradition_en.htm)

Home Office, 'The Law of Extradition: A Review' (March 2001):

<http://www.homeoffice.gov.uk/documents/cons-2001-extradition?view=Binary>

Home Office, 'Extradition Procedures in the UK':

<http://police.homeoffice.gov.uk/operational-policing/extradition-intro1/>

Interpol: <http://www.interpol.int/>

The European Court of Human Rights: <http://www.echr.coe.int/echr/>

United Nations Office of the High Commissioner for Human Rights website:

<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

The information provided in this factsheet is intended for information purposes only. It is not intended to constitute, nor does it constitute legal advice. Prisoners Abroad recommend that professional legal advice should always be sought. The information contained in this factsheet is subject to change and may not be up-to-date or accurate. Prisoners Abroad gives no warranty and makes no representation regarding the accuracy or completeness of the information provided. Prisoners Abroad will not be held responsible for any loss or damage arising from the use of the information provided.

If you spot any errors or inaccuracies in this factsheet please let us know by emailing [info@prisonersabroad.org.uk](mailto:info@prisonersabroad.org.uk). Thank you.

If you require this leaflet in a large print format, please contact us. Our details are below.

Tel: 020 7561 6820

+44 20 7561 6820 from outside the UK

Email: [info@PrisonersAbroad.org.uk](mailto:info@PrisonersAbroad.org.uk)

Mail: Prisoners Abroad, 89-93 Fonthill Road, London  
N4 3JH, United Kingdom