

## The European Arrest Warrant – Cases of Injustice

Wanted for a crime he could not have committed – Edmond Arapi

**Edmond's case highlights:**

- ***the danger of placing complete confidence in the fair trial safeguards of requesting countries, merely on the basis that they are legally bound to comply with Article 6 ECHR.***
- ***The need for legal representation in the issuing State.***

Edmond Arapi was tried and convicted in his absence of killing Marcello Miguel Espana Castillo in Genoa, Italy in October 2004. He was given a sentence of 19 years, later reduced to 16 years on appeal. Edmond had no idea that he was wanted for a crime or that the trial or appeal even took place. In fact, Edmond had not left the UK at all between the years of 2000 to 2006. On 26 October 2004, the day that Castillo was murdered in Genoa, Edmond was at work at Café Davide in Trentham, Staffordshire, UK and attending classes to gain a chef's qualification.



Edmond was arrested in June 2009 at Gatwick Airport on an EAW from Italy, while he was on his way back from a family holiday in Albania. It was the first he knew of the charges against him in Italy.

There was a raft of contradictory expert evidence about whether Edmond would be entitled to a full retrial after extradition to Italy, and whether his alibi evidence (and the witnesses he would need to testify about his activities and whereabouts on the day of the murder) would be admitted at any trial. Appeals had been exhausted in Italy (again, without Edmond's knowledge – they were attended on his behalf by a public defence lawyer and the conviction had been upheld).

It seemed far from clear that Italian law guaranteed a re-trial for defendants tried *in absentia*, where the conviction had been appealed. It was clear that Edmond risked being held for years on remand awaiting trial, as Italy has one of the worst records in Europe for delays in the justice system. Nevertheless, having heard conflicting evidence on Italian procedural law, the English court ordered his extradition on 9 April 2010.

FTI worked extensively on Edmond's case; attempting to persuade the Italian authorities to withdraw the EAW, working with Albanian lawyers to help establish the identity of the real perpetrator, and raising the profile of his case with the public and politicians.

On 15 June 2010, the day the appeal against his extradition order was to be heard at the High Court, the Italian authorities decided to withdraw the EAW, admitting that they had sought Edmond in error. They provided information indicating that Edmond's fingerprints did not match those at the crime scene. If Edmond had been provided with legal representation in Italy from the outset, then the fact that he was the victim of mistaken identity could have been discovered much sooner. Edmond narrowly avoided being separated from his wife and children, including a newborn son, and spending months or years in an Italian prison awaiting a retrial.

### **Acquitted in 1989, yet British grandmother was still wanted 20 years on – Deborah Dark**

***Deborah's case highlights: the need for EAWs to be removed immediately by issuing States once an executing State has declined to execute.***

In 1989, Deborah Dark was arrested in France on suspicion of drug related offences and held in custody for eight and a half months. Her trial took place later in 1989 and the court acquitted her of all charges. She was released from jail and returned to the UK. The prosecutor appealed against the decision without notifying Deborah or her French lawyer. The appeal was heard in 1990 with no one there to present Deborah's defence. The court found her guilty and sentenced Deborah to six years' imprisonment. Again, she was not informed that an appeal had taken place, nor notified that her acquittal had been overturned. As far as she was concerned she had been found not guilty of all charges and was free to start rebuilding her life. In April 2005, fifteen years after the conviction on appeal, an EAW was issued by the French authorities for Deborah to be returned to France to serve her sentence. She was not informed about this.



In 2007, Deborah was arrested at gunpoint in Turkey, while on a package holiday with a friend. The police released her, unable to explain the reasons for her arrest. Upon her return to the UK, she went to a police station and tried to find out the reasons for her arrest. She was told that she was not subject to an arrest warrant. In 2008 Deborah travelled to Spain to visit her father who had retired there. On trying to return to the UK, she was arrested and taken into custody in Spain, where she faced extradition to France. Deborah refused to consent to the extradition, and was granted an extradition hearing. After one month in custody, the Spanish court refused to extradite Deborah on the grounds of unreasonable delay and the significant passage of time. Deborah was released from prison and took a flight back to the UK. However, her ordeal was not over.

On arrival in the UK, Deborah was arrested again – this time by the British police at Gatwick airport. Once again, she refused to consent to the extradition and was released on bail pending another extradition hearing. The English court refused the extradition in April 2009 due to the passage of time.

As there is no provision for the withdrawal of the EAW by the issuing State in such situations, Deborah spent years as an effective prisoner in the UK – feeling unable to leave the country due to the risk of being re-arrested on the same EAW. In May 2010, after FTI helped build public and political support for Deborah’s case, France finally agreed to remove the EAW, but only after Deborah had spent three years as an effective prisoner in the UK due to the risk of re-arrest.

### **Extradited after a grossly unfair trial – Garry Mann**

***Garry’s case highlights: the need for courts to exercise discretion to refuse extradition on human rights grounds.***

Garry Mann, a 51-year-old former fireman from Kent, went to Portugal during the Euro 2004 football tournament. On 15 June 2004, while Garry was with friends in a bar in Albufeira, a riot took place in a nearby street. Garry was arrested along with other suspects some four hours after the alleged offences. He was tried and convicted, less than 48 hours after his arrest. He had no time to prepare his defence and standards of interpretation at the trial were grossly inadequate. The proceedings were interpreted by a hairdresser who was an acquaintance of the judge’s wife.



He was convicted following a widely publicised trial in Albufeira and sentenced to two years’ imprisonment on 16 June 2004. On 18 June 2004 he voluntarily agreed to be deported and was told that, provided he did not return to Portugal for a year, he would not have to serve the sentence.

Back in the UK, Garry tried unsuccessfully to appeal his conviction. In October 2004 he lodged an appeal to the Constitutional Court in Lisbon but heard nothing from the Court. Separately, the UK police applied for a worldwide football banning order against Garry on the basis of the Portuguese conviction, but in 2005 an English Court held he had been denied a fair trial in Portugal and refused to make the banning order.

Garry was astonished when in 2009 he was arrested on an EAW, alleging he was wanted in Portugal to serve a two year prison sentence. In August 2009 an English court ordered his extradition to Portugal.

The case was heard by the English High Court in March 2010. Lord Justice Moses described the case as an "embarrassment" and said: "If there was a case for mediation or grown up people getting their heads together then this is it." The judge said that new evidence from the Foreign and Commonwealth Office "lends force to his belief that a serious injustice" had been committed against Mr Mann. Despite this, there were no available legal grounds upon which to refuse Garry’s extradition.

Garry was surrendered to prison in Portugal in May 2010. He was transferred back to the UK in May 2011 and was finally released in August.

### **Student extradited to horrendous prison conditions – Andrew Symeou**

***Andrew's case highlights: the need for courts to exercise discretion to refuse extradition on human rights grounds.***

FTI client, Andrew Symeou, tried and failed to resist extradition to Greece on Article 3 grounds. After extradition, Andrew spent a harrowing 11 months on remand in custody in Greece: his trial commenced recently but has been adjourned twice due to unavailability of qualified interpreters and court strikes. He has described to his parents the conditions he was held in: a university student with no previous criminal record who still lived with his parents, he spent his 21<sup>st</sup> birthday in a notoriously dangerous prison, Korydallos. His father Frank described some of the conditions in his oral evidence to the Committee on 1 February. The conditions included:



- filthy and overcrowded cells;
- sharing cells with up to 5 others including prisoners convicted of rape and murder;
- violence among prisoners: one was beaten to death over a drug debt;
- violent rioting;
- cockroaches in cell, fleas in bedding, prison infested with rats and mice shower room floor covered in excrement.

This description conforms with information contained in the numerous expert reports placed before the court in Andrew's Article 3 challenge to extradition. The Committee for the Prevention of Torture (CPT) had reported the previous year that "persons deprived of their liberty in Greece run a real risk of being ill-treated". Amnesty International and other human rights NGOs had similarly criticized Greece's prisons in the harshest terms.

This evidence was held insufficient as a bar to extradition, because Andrew could not prove that any of this would happen to him: and because in any case mistreatment was sometimes part of the European detention culture:

*[T]here is no sound evidence that the Appellant is at a real risk of being subjected to treatment which would breach article 3 ECHR, even if there is evidence that some police do sometimes inflict such treatment on those in detention. Regrettably, that is a sometime feature of police behaviour in all EU countries.<sup>1</sup>*

In hindsight, it is difficult to know what more Andrew Symeou could have done to bring the risk he faced to the court's attention and invoke his Article 3 rights before his extradition. He

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<sup>1</sup> *Symeou v Public Prosecutor's Office at Court of Appeals, Patras, Greece* [2009] EWHC 897 (Admin) at para 65

had never been to Greece before he went there as a student on his first holiday without his parents. He had not even been arrested or questioned by police in Zante and had no first-hand experience of Greek police procedures, remand facilities or prison conditions, before his extradition. The same is true of the majority of people extradited under the EAW system.

Information about the conditions Andrew was held in on remand was set out in detail in affidavit evidence from a solicitor who had visited him, as well as from Fair Trials International's caseworker, in support of another recent challenge on Article 3 grounds. Again, it was held that the test was not met and extradition was ordered.<sup>2</sup>

Following numerous delays due to prosecution errors, Andrew was finally released pending trial in June 2010. His four-year ordeal finally came to an end on 17 June 2011, when he was acquitted by a Greek court.

### **Extradited before being charged – Michael Turner and Jason McGoldrick**

***Michael and Jason's case highlights: the need for the wide variation in standards of procedural rights protections across the EU to be taken into account in EAW proceedings.***

Hungarian authorities sought the extradition of Michael Turner (right), a 27 year old British national from Dorset, and business partner Jason McGoldrick (37), following the failure of their business venture in Budapest.



Michael was extradited to Hungary under an EAW on 2 November 2009 and was held in prison for four months, during which time he was interviewed only once by police. He was released from jail on 26 February 2010 and was allowed to return to the UK, but was requested to return for further police interviews in April.

The EAW is intended to be used to extradite people to serve a prison sentence or for the purposes of a criminal prosecution. In Michael's case, however, an extradition took place even though no decision had yet been made to prosecute him. This improper use of the EAW subjected Michael and Jason to four unnecessary months in prison in extremely difficult conditions.

Michael's father, Mark Turner, has described how the pair were held in separate parts of a former KGB prison and were not allowed to contact family members or consular officials. Michael had to share a cell with three other prisoners and was only allowed out of the cell for one hour a day. Two weeks into his detention Michael was wearing the same clothes in which he had been arrested and had not been allowed to have a shower or clean his teeth.

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<sup>2</sup> *Herdman and ors v City of Westminster Magistrates Court* [2010] EWHC 1533 (Admin)

Prison officers refused to allow him to open parcels from his family containing basic items like toothpaste. Hungary's investigation is still ongoing with charges neither brought nor dropped against Michael.

### **Disproportionate use of the EAW – Patrick Connor**

***Patrick's case highlights: the need for a proportionality test to stop EAWs being issued for minor offences resulting in wasted costs and unduly harsh effects on individuals' lives.***

Patrick Connor (not his real name) was just 18 when he went on holiday to Spain with two friends. While there, all three were arrested in connection with counterfeit euros. Patrick himself had no counterfeit currency on him or in his belongings when arrested and has no idea how the notes came to be on his two friends and in their rented apartment – in total, the police found 100 euros in two notes of 50. The boys were held in a cell for three nights. On the fourth day they appeared in court and had a hearing lasting less than an hour, at the end of which they were told they were free to leave but might receive a letter from the authorities later.

They returned to the UK and heard no more about it until four years later when, as Patrick was studying in his room at university, officers from the Serious Organised Crime Agency arrested him on an EAW.

Patrick was extradited to Spain and held on remand in a maximum security prison in Madrid. Other inmates told him he might be in prison for up to two years waiting for a trial. Under immense pressure and fearing for his future, he decided to plead guilty, even though several grounds of defence were available and he would have preferred to fight the case on home ground, on bail, and with a good lawyer he could communicate with in English. None of this was possible, and he ended up spending nine weeks in prison before coming home to recommence his university career, his future blighted by a criminal record.

### **Wanted in another country for exceeding his overdraft limit – Mikolaj Kowalski**

***Mr Kowalski's case highlights: the need for proportionality checks to stop EAWs being issued for minor offences.***

Mikolaj Kowalski (not his real name), a Polish schoolteacher and grandfather who lives in Bristol, was sought on an EAW to face trial for "theft" in Poland. The alleged offence referred to a period in 2000 when Mr Kowalski withdrew money from his bank taking him over the agreed overdraft limit. The entire debt was repaid to the bank after it repossessed and sold his home. In 2004, he moved with his family to the UK where he has lived ever since.

On 23 July 2010, with no prior notice, British police arrested Mr Kowalski pursuant to the EAW. He was threatened with a criminal trial for a debt he paid off many years ago. Mr Kowalski has numerous health problems, having suffered three strokes in the past two

years. He was very worried about being sent to prison in Poland and being separated from his family, including his wife who cares for him and who herself has serious disabilities.

Thankfully, in April 2011 the English court decided Mr Kowalski's extradition should not go ahead due to his health problems. The EAW remains in place and he is unable to leave the UK.

### **Extradited in breach of double jeopardy – Alan Hickey**

#### ***Alan's case illustrates: the need for early access to legal advice in both jurisdictions in extradition cases.***

Alan Hickey, a lorry driver from London, was convicted in France of people-trafficking and sentenced to serve 18 months in prison in December 2009. Alan pleaded guilty to this offence after the judge told him orally that if he did so, he would be free sooner, whereas if he pleaded not guilty, he would spend years in pre-trial detention. While he was in prison in France, Alan found out that Belgium had issued an EAW seeking his surrender from France to stand trial for people-trafficking "with aggravating circumstances" and as part of a criminal conspiracy.

Alan was not given clear information about whom he was meant to have conspired with or when or where the conspiracy was meant to have taken place. He was concerned that the Belgian charges related to the same matter for which he had already been sentenced in France. This would mean that extradition should be barred on "double jeopardy" grounds. However, given the lack of information about the charges in Belgium, Alan's French lawyer did not raise this issue at the extradition hearing. Alan's extradition was ordered before any further information could be gathered from Belgium.

Meanwhile in Belgium, hearings began in Alan's absence. Fair Trials International found a lawyer to act for Alan in Belgium on a *pro bono* basis, to represent him in his absence and to try and uncover more information about the Belgian case. If we had not intervened, a court-appointed lawyer assigned to represent Alan in his absence would have had no chance to take instructions from him. Worryingly, even once instructed, Alan's lawyer was only granted limited access to the case file: only two hours to read 17 boxes of prosecution documents. Alan's lawyer managed to get his trial delayed until after his surrender to Belgium.

Once released from France and in Belgium, Alan's concerns about double jeopardy were vindicated. The judge at Alan's trial found that some of the Belgian charges arose from the same events for which he was convicted in France. Alan pleaded guilty to the other offence and was given a suspended sentence.

Alan's extradition in breach of the double jeopardy rule could have been avoided if he had been provided with effective legal representation in both France and Belgium from an early stage.