



# HOUSE OF LORDS

Revised transcript of evidence taken before

## **The Select Committee on Extradition Law**

Inquiry on

### **EXTRADITION LAW**

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10 am

Witnesses: Rt Hon Theresa May MP, Kenny Bowie and Ross Goodwin

#### USE OF THE TRANSCRIPT

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### Members present

Lord Inglewood (Chairman)  
 Lord Brown of Eaton-under-Heywood  
 Lord Empey  
 Baroness Hamwee  
 Lord Hart of Chilton  
 Lord Henley  
 Lord Hussain  
 Baroness Jay of Paddington  
 Lord Jones  
 Lord Mackay of Drumadoon  
 Baroness Wilcox

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### Examination of Witnesses

**Rt Hon Theresa May MP**, Home Secretary, **Kenny Bowie**, Head of International Criminality Unit, Home Office, and **Ross Goodwin**, Legal Advisors Branch, Home Office

**Q191 The Chairman:** Home Secretary, thank you very much indeed for coming along to talk to us. You have come with two of your colleagues. They are both equally welcome. If they wish to intervene, they should feel free to do so, from our point of view. I remind everybody that proceedings are being televised. Home Secretary, is there anything you would like to say as an opening statement or would you rather proceed directly to the question and answer session? We have given you an indication of the topics that we are interested in.

**Rt Hon Theresa May MP:** I thought that I would, if I may, comment slightly tangentially, and thank the Committee for the work that it did on the European arrest warrant and note that we have now opted back in to all of the 35 measures in the package of the justice and home affairs opt-in, including the European arrest warrant.

**The Chairman:** Is it actually on the statute here now?

**Rt Hon Theresa May MP:** Everything has been done and the regulations have been signed.

**Q192 The Chairman:** I will ask the first question. Criticism has been levelled at the European arrest warrant such that it subjugates the rights of individuals to the expediency of justice. Do you agree? A whole series of procedural aspects derive from that. How do you, over time, propose to deal with some of those?

**Rt Hon Theresa May MP:** I am aware that over time the European arrest warrant has come under some criticism for some of its aspects. The fact that it is a smoother and speedier

process for extradition is good. One of the problems with the previous arrangements that were in place was the length of time that it took for extraditions to take place. But that has to be balanced properly against concerns in relation to the rights of the individual. Some of those issues that have been raised previously—that the procedures did not properly balance those rights—we have acted on to mitigate and deal with here in UK legislation. There are two issues that I would raise particularly. One is the proportionality issue, which was a long-term concern for Members of both Houses and the public. We have now introduced the requirement to consider proportionality here in UK law. There are a number of other things in relation to the measures in Europe that support this as well. For example, we will be joining SIS II, the second-generation Schengen Information System, which within it has a requirement to consider proportionality. That is the main means by which information on arrest warrants is exchanged. Introducing a proportionality element has helped to deal with one of the criticisms about the procedures within the European arrest warrant. The other was the question of lengthy detention before any charge or trial was brought. We have now introduced a requirement for the case to be trial ready and for the requesting country to be in a position to charge or take someone to trial rather than simply taking an individual from the UK and keeping them in detention for a significant period of time. Alongside that, we have introduced some other procedures that can help. Where there is an issue about getting evidence, if the individual subject to the European arrest warrant consents, they can be taken temporarily to give evidence and then brought back to the UK. We have made arrangements in relation to things such as video links on evidence. I am sorry that this is a lengthy answer, but finally I would also point out that, having signed up to the European investigation order, that is one of the issues that will start to reduce the reliance on European arrest warrants that has occurred in the past. It smoothes the evidence-gathering element of the process of justice.

**The Chairman:** That is interesting. You have told us that some things are happening. Have you other ideas in the pipeline for taking some of these things forward? There has been a lot of criticism about some aspects of this.

**Rt Hon Theresa May MP:** I would hope that the changes that we have already made in UK legislation crucially will be those that will deal with the key issues that people have raised. We are already seeing European arrest warrants being refused here in the UK as a result of the changes to legislation that we have made.

**Q193 The Chairman:** Could you be a little more specific about arrangements regarding video links, which is a topic that has come up a number of times?

**Rt Hon Theresa May MP:** I may ask one of my officials to give some of the more technical details in relation to the video links.

**Kenny Bowie:** Essentially, one of the criticisms of the arrest warrant was that it was issued at the investigatory stage of proceedings rather than when the case was trial ready. The introduction of video link evidence would mean that, rather than having to extradite the person when the case is not potentially trial ready, what can happen now is that, if the individual consents, they can speak with the issuing judicial authority in the requesting state and essentially give their version of events.

**The Chairman:** Who is providing the link?

**Kenny Bowie:** Most of the time it will be done through Westminster Magistrates' Court.

**The Chairman:** It is dependent on the person affected agreeing to this procedure.

**Kenny Bowie:** Yes, and the issuing judicial authority being happy for that to happen as well. This is something that other member states do as well and which we understand from them has been quite effective.

**Q194 The Chairman:** Finally, following on from that, the character of the European arrest warrant is part of a system that extends way beyond our borders here. To a significant extent, the credibility of the whole thing depends on how well it works right across Europe. Are we planning to take a leading role in trying to refine and improve on an ongoing basis the workings of the system?

**Rt Hon Theresa May MP:** We have already undertaken some work with individual member states. For example, the country where people were most concerned about the proportionality argument was Poland. A significant number of European arrest warrants had been requested by Poland. The Poles themselves are looking at bringing in new legislation to introduce a proportionality threshold for the requests for European arrest warrants. That is one example.

When we started the process of looking at the EAW mainly as part of the JHA opt-out issues, we looked at the possibility of whether there would be a consensus within the European Union from other member states of looking at the directive itself and making some changes to it. What I discovered was that while others had similar concerns in some areas to those that we had—for example on proportionality—there was no appetite for opening up the

whole directive. The concern was that it was working well and there was potential for ending up with something that was not as good an instrument as the one that we have at the moment, rather than a better instrument. That is why we looked to what other countries did.

Some other countries have proportionality measures already available to them, so that is why we chose to legislate within the UK. The Commission has made it very clear that it did not think that the directive should be opened up. The European Parliament raised some issues with it. Baroness Ludford worked on a report from the European Parliament that touched on some of these issues of length of detention before trial and proportionality. But so far there has been no great appetite for looking at the directive itself. There may be some appetite for co-operation in terms of some of the processes that we go through, but not in terms of the actual legislative framework.

**The Chairman:** It is fair to say that we are interested in reforming and amending the details of the way that the process set down in the directive works, but we are not in the business of trying to replace it with something else.

**Rt Hon Theresa May MP:** The experience so far is that there would not be a consensus for replacing it given that the Commission has said that it does not want to act on this. It would be a member state initiative, which requires nine member states to come together. We explored that, but did not find agreement elsewhere. Hence, we have dealt with the issues that were of concern through our own legislation.

**The Chairman:** From the UK perspective on justice concerns, do you think that we are managing to secure what is desirable?

**Rt Hon Theresa May MP:** I think that we are. As I indicated, there were some other measures in addition to the European arrest warrant that now change the environment in which it operates, such as the investigation order. Indeed, when Sir Scott Baker's panel reported on extradition arrangements, I recall that it referred to the European investigation order as something that could change the reliance on European arrest warrants.

**The Chairman:** I have slightly trespassed on an area that Lord Mackay wanted to talk about, so I will hand over to him.

**Q195 Lord Mackay of Drumadoon:** Thank you very much. It may well be that the question that I was going to ask will already have been answered, but I want to be quite clear about it. It is framed in these terms: in the light of the recent amendments to the Extradition Act

2003, what changes to the European arrest warrant framework decision do the Government want to see and what are they doing to bring these about? I understand from what you have helpfully told us thus far that there are no changes to the framework decision that you want at the moment. There are, however, some administrative procedures that you would be comfortable and interested in changing to help the administration but not the actual basic skeleton of the procedure as set out in the framework decision.

**Rt Hon Theresa May MP:** We started off looking at whether the best way to achieve what we wanted was to try to change the framework decision. It was clear that there was no appetite to do that. We looked at what we could do in our own legislation, and have done, and have been talking with other member states such as Poland, as I indicated, about what they might do in their legislation as well. There are some other issues that still need to be addressed, but we can start to look at that through some of the administrative procedures. On the question of an arrest warrant being refused by one country but then being exercised in another country, for example, we want to put information on the SIS II system to flag that an arrest warrant has been refused in the UK so that another member state seeing that arrest warrant would recognise that it had already been refused by a member state. One of the issues is somebody feeling that their arrest warrant has been refused then finding themselves arrested in a third member state.

**Lord Mackay of Drumadoon:** It would be of interest to this Committee to have an outline set out in writing of what these other matters are.

**Rt Hon Theresa May MP:** We are very happy to do that.

**Q196 Lord Mackay of Drumadoon:** It is quite a common occurrence in our House for a government Minister to volunteer. You have joined the volunteering. Finally, you may have gathered from my name and accent that I live in Scotland, where the procedure is not hugely different, but different in certain respects from that followed in England, Wales and Northern Ireland, as I understand it. Has there been consultation with the Scottish Government—if they are not too busy settling into their future—so that any Scottish concern has been considered and resolved in a satisfactory way?

**Rt Hon Theresa May MP:** Yes, when we were looking to introduce the changes in our legislation here, we consulted with the Scottish Government. All the devolved Administrations would have been consulted on the impact.

**Q197 Lord Empey:** Good morning, Secretary of State. Having gone back into the EAW, are you satisfied that the Commission will not be subjecting the United Kingdom to any infringement proceedings as a result of amendments to the 2003 Act?

**Rt Hon Theresa May MP:** I think it is probably not realistic to consider that the Commission will ever give any blanket guarantees on issues such as this. The issue is less one of where the Commission would be—of course, the Commission has recently changed. There is no indication so far from the new Commissioners that this is an issue that they wish to look at. The concern that has been expressed to me more generally—it was certainly expressed in the Chamber in the other place—is the question of the jurisdiction of the European Court of Justice on these matters and whether the European Court would in fact take issue with this. First, some other member states have some of these measures in their toolkit already—on proportionality, for example. Germany has already been exercising a proportionality threshold and there has been no suggestion that this should be something that they overturn. There have also been some cases in the court recently that actually support us. In the Radu case, the court did not address the question of whether or not we should have regard to fundamental rights including proportionality, but decided to avoid that question. The court did not feel that that was something it should look at. It made an assessment of fundamental rights and decided that there was no need for an additional hearing in the issuing state before a warrant is issued. The court has looked at part of these issues and come out with a judgment that we believe supports our case. There is also some domestic case law that supports us. There is domestic case law in Germany and in Ireland that supports this.

**Lord Empey:** You alluded to the fact that the Commission has recently changed. Have you any reason to believe that there might be a different approach? Obviously, a new Commissioner comes in and presumably we approached the outgoing Commissioner to get a steer. There is no guarantee that the new Commissioner would take the same position. In other words, is there a doubt still out there regarding the new Commissioner's attitude?

**Rt Hon Theresa May MP:** From the interaction that I have had with the new Commissioners so far, there is no suggestion that they would take a different approach in relation to this matter. Of course, the new Commission came in during the process of us opting back in to the 35 measures covered by JHA protocol 36 and took exactly the same approach taken by the previous Commissioner and Commission. So there is no suggestion that they intend to

change their view in relation to this matter. As I say, this is not something where the United Kingdom is out on a limb. These are areas where other member states have, through various means, applied similar arrangements within their own domestic decision-making processes as well.

**Q198 Lord Brown of Eaton-under-Heywood:** That is very helpful, Home Secretary. There are ways in which you are striving to delay the issue of the European arrest warrant and trying, instead of making it a first option, to make it a much later option; you are putting in place, hopefully, provisions in the law to make it necessary to be trial-ready and relating to video links and things of that order. Once the European arrest warrant is issued, the question then comes, of course, of bail and of our old friend the European supervision order. We have signed up for it, but I do not think we have implemented it yet, have we? What are we doing about that? “Eurobail” is its other common term.

**Rt Hon Theresa May MP:** Yes, that is exactly right. The intention is that that will be implemented. It is one of the 35 measures.

**Lord Brown of Eaton-under-Heywood:** But when? Why has it not been by now?

**Rt Hon Theresa May MP:** The regulations that we signed actually implemented it. Sorry, I have been corrected—as of today.

**The Chairman:** This is where you heard it first.

**Lord Brown of Eaton-under-Heywood:** Are other steps being taken to try to ensure that one does not have to wait so very long for trials in other member states? The delays in countries such as, famously, Italy and so forth are legendary. Are any steps being taken to try to harmonise pre-trial delays?

**Rt Hon Theresa May MP:** I am tempted to say, Lord Brown, that it is an interesting enough job trying to harmonise and make more efficient the criminal justice system in the United Kingdom, let alone trying to do it in other member states as well. That was a slightly flippant response but, as I said earlier, we are going into a different scenario now with these various different measures that will be in place in Europe, which provide, I think, a greater comfort to people here in the United Kingdom in terms of what might happen. I cannot guarantee that other member states will speed up their processes, but I know that with our own measures and with the European investigation order it should be much less likely for somebody to be arrested, taken back to a member state and held while the evidence is being gathered. That is down to the various measures that we have taken.



**The Chairman:** Are you satisfied, from the perspective of the administration of justice, that the process of bringing people back here will equally benefit from what is going on?

**Rt Hon Theresa May MP:** Yes, indeed. We have had some very good examples where we have been able to exercise the European arrest warrant and bring people back in a timely fashion, which has been beneficial.

**Q199 Baroness Jay of Paddington:** Home Secretary, we have heard quite a lot about the question of assurances as something that is increasing in extradition cases. You may well say, as you did on the previous question, that this is a major challenge of trying to harmonise systems, but one of things that has concerned us has been the extreme informality of the undertakings that seem to be given in terms of prison conditions and even the possibility of torture et cetera. Do the Government feel that these procedures for maintaining and monitoring assurances should be more formal?

**Rt Hon Theresa May MP:** You are absolutely right, of course, that assurances have become in a sense more a part of some of the extradition arrangements that take place, particularly, obviously, with countries outside the European Union and outside the exercise of the European arrest warrant. That is a process where very often it is the court that makes requirements in terms of the assurances and looks at the nature of those that are being given, so that they satisfy the court in terms of making an extradition decision. The very nature of assurances is such that it is difficult to put in place a one-size-fits-all model that is going to apply in all circumstances. Obviously, assurances will be looked at on a case-by-case basis. Of course, the individual British citizen who is taken and extradited under those arrangements has access to consular support should there be any change in the assurances that have been given. I have been made aware of one case where an assurance was broken but in fact, subsequently, the individual decided that he did not wish to return to the basis of that original assurance and is happy with the arrangements that are now in place.

**Baroness Jay of Paddington:** We have had evidence from the Foreign Office about the consular arrangements for British citizens, but obviously we are also talking about people who may not originally be British subjects or citizens, so there is an additional issue there. One of the proposals suggested to us is that, rather than relying, for example, on the consular system for everybody, we should perhaps give this role to the courts and that our courts should be responsible for monitoring.

**Rt Hon Theresa May MP:** Obviously, the courts are responsible for determining the strength of the assurances that they see in the first place. It is an interesting question. We are doing some work with the FCO to look at this aspect of the issue and we recognise the concerns that have been raised about it. There could very well be some challenges for our courts if they were being required to monitor assurances in respect of things that were taking place abroad but, as I say, it is an issue that we have started to look at and are happy to look at with the FCO.

**Baroness Jay of Paddington:** The issue for us, looking at the policy, is the question of formality. As you say, one size cannot fit all, but can we get some more strict arrangements in for monitoring and indeed for enabling challenges to a system if assurances are not kept?

**Rt Hon Theresa May MP:** I understand the point that you are making. We are looking at this with the FCO to see whether there are any measures that need to be taken to give greater assurance to the assurances.

**Q200 The Chairman:** What view do the Government take about those who have been extradited from this country who are not British citizens and who then, as a result of extradition, end up in prison in some other country, possibly a category 2 country, where it is almost impossible to know in detail what is going on in jail? What responsibilities do we have towards such a person, who is not a British national?

**Rt Hon Theresa May MP:** Are you talking about a situation where, as part of the extradition, the court has determined that certain assurances—

**The Chairman:** A situation where somebody has been extradited from an area where they have certain rights, which are reasonably easily enforceable, into a country that may not have those rights in the same form at all—anyway, someone who has gone pretty far beyond the radar. What, if anything, do we feel we should do in respect of them?

**Rt Hon Theresa May MP:** I think that this is a more difficult question, because of course, as Lady Jay indicated, where it is a British national the consular arrangements naturally kick in, if I can describe it that way. Where it is somebody who is not a British national, that is more difficult and there would obviously not be the same arrangements. I am being told that we have made arrangements with the Foreign Office whereby they will undertake to follow up in certain circumstances. Kenny, perhaps you could explain.

**Kenny Bowie:** My understanding is that, when there are situations of particular concern or when it is a particular country, not in every case but in a certain number of cases the FCO

will follow up. I will provide you with further information as to exactly how, but I understand that it is done on a sort of risk-based approach at the moment.

**Rt Hon Theresa May MP:** That is an area where perhaps we may volunteer to write to the Committee, perhaps with some further information.

**Q201 The Chairman:** That would be extremely helpful. The other question, which relates to that, is if you are in a country where it is all a bit vague what is happening. Say somebody is moved from jail A to jail B inside the prison system, how do we know if they have gone from a place which is acceptable to a place which is not?

**Rt Hon Theresa May MP:** This is one of the issues that we need to address. The only other comment I would make is that, where somebody is being extradited to be taken to justice because there is an allegation that they have committed a crime, although I recognise that standards of justice and standards of prisons vary across the world, we should not lose sight of the fact that there is a purpose for the extradition.

**The Chairman:** But just because you are put in prison it does not automatically follow that whatever rights you may have had just evaporate. That is the point I am interested in.

**Lord Mackay of Drumadoon:** May I make a short contribution on this matter? In my practical experience—first, appearing in court and then sitting as a judge in court—I have observed a number of occasions when a judge has been quite expert in asking questions seeking to clarify what assurances are available and what steps would be taken locally to enforce them. The very simple fact is that if a foreign country refuses to live up to its assurances then it will face practical problems in this country if it comes seeking to extradite someone back to it.

**Rt Hon Theresa May MP:** Yes, indeed. Lord Mackay makes a very important point. If somebody is extradited with assurances and those are not kept, then the next extradition request made to the United Kingdom might very well be looked at with a rather more sceptical eye.

**Q202 Lord Hussain:** My question is about a person who holds dual nationality and is extradited to the country where he holds the nationality other than the British. He is basically in a country where he is considered to be their national too. What would be our course of action in terms of extradition and assurances? How far will that country be held to assurances?

**Rt Hon Theresa May MP:** That is one of the issues that we are exploring, The Immigration Minister wrote earlier this year to the Foreign Secretary about this issue, raising in particular the question of non-British citizens—that is in relation to the earlier part of the question. The different categories of British citizen, non-British citizen and dual national are three categories that we will be looking at with the Foreign Office to see what the various arrangements would be in place for looking at potential breaches of assurance. We will be covering that issue in those discussions.

**Q203 Baroness Wilcox:** In the light of the threat posed by radicalised individuals committing terrorist acts in the UK and then fleeing abroad, how will the Government facilitate import extradition to the UK from countries that do not have arrangements with us, such as Egypt, Indonesia or Pakistan?

**Rt Hon Theresa May MP:** Obviously, there are a number of countries with which we have bilateral treaties. There will always be challenges in some cases with those countries where we do not have bilateral treaties. Where we do not have formal treaties, there are other elements that we can consider. Section 193 of the Extradition Act 2003 provides that, where we do not have extradition relations with a particular territory, an international convention to which both the UK and the other territory were parties could form the basis for extradition, where the territory has been designated under the Act. We have to make some changes here as to how we do that designation process. We are now designating conventions rather than countries, because it was impractical to update the order every time a territory ratified a convention. Where we have designated a convention, and a country is a party to it, we can rely on that convention for the extradition. Countries such as Indonesia, Syria and Pakistan have all ratified the UN Convention on Transnational Organized Crime and other UN terrorism-related conventions. In those countries, the basic framework should be there to allow for extradition to take place. Even if there is no extradition treaty or signature to a relevant convention, we can make an ad hoc arrangement on a bilateral basis with a country if that is what appears to be appropriate given all the requirements on safeguards for individuals.

**Q204 The Chairman:** In the *Times* earlier this week there was a report on a henchman of Adolf Eichmann, allegedly in Damascus, who it was said had been assisting in training people in how to torture. The Germans tried to extradite him but were unsuccessful. In practice,

how much of the world is a no-go area for extradition for us? Do you know? You may not. I will not ask you to name names.

**Baroness Wilcox:** Today.

**Rt Hon Theresa May MP:** I would hesitate to try to give a description of that. It is probably not quite such a binary decision. I suspect that you would find that there were countries where some extraditions would be allowed and others would not. It will not necessarily just be that country A will always refuse extraditions from the UK, Germany or some other country, but they would probably look at it on a case-by-case basis.

**The Chairman:** That is presumably what we would do with some other countries if the roles were reversed.

**Rt Hon Theresa May MP:** Yes.

**The Chairman:** Systemically, is the system pretty comprehensive, or are there any black holes? To mix my metaphors, is it a little like Gouda cheese?

**Rt Hon Theresa May MP:** It is a system that gives us a reasonably comprehensive cover, but there will always be countries with which it is difficult to operate. There will be countries which for various reasons may not wish to co-operate with us on certain matters and also countries where we will have very real concerns about the conditions in which somebody who was extradited to that country would be treated. There will be decisions for us in relation to human rights and safeguards and the judicial systems of other countries. Those will change over time as well, as different regimes may operate different systems.

**Q205 Lord Hussain:** Home Secretary, you have partly answered this question. The experience of individuals extradited to countries such as the United States, although judged to be human rights compliant, is by no means pleasant. How might aspects of the process be amended to lessen the impact on the requested people?

**Rt Hon Theresa May MP:** We have looked in general at our extradition arrangements. I recognise that people often raise the question of our extradition arrangements with the United States. Of course, Sir Scott Baker and his panel looked at the balance in our arrangements with the United States and were comfortable that there was a balance there. Issues have been raised in relation to the US but, in general, the very issue that we have been discussing is one of the ways in which one can look at any concerns about how an individual would be treated so that assurances can be gained from the country to which an individual is being extradited. There was a recent example of that in relation to the case of

Aswat, who was suffering from mental illness. We were able to obtain further assurances from the US about his treatment. The High Court decided on the basis of further assurances that he could indeed be extradited to the United States. Assurances are one way of doing it. Of course, we have inserted a further threshold here in the UK in relation to extraditions that are not subject to the European arrest warrant. An issue that came up particularly in relation to the United States was whether somebody should be tried here in the UK or in the United States depending on the nature of the alleged criminality that has taken place. We have inserted the forum bar now, which is being exercised in UK courts in relation to US extradition requests. We have added an extra protection in the United Kingdom in relation to such extraditions.

**Q206 The Chairman:** Is that the type of approach—putting an extra safety measure in place—an attribute as far as you know of most civilised jurisdictions? Are we out on a limb in looking at it this way or is this something that is happening more generally? You may not have a precise answer to that.

**Rt Hon Theresa May MP:** I am not sure that we have a precise answer. As I indicated earlier in relation to the EAW, there are certain measures that we have put in place that other countries have also put in place. I think that it is true to say that the forum bar was not universally popular outside the United Kingdom when we introduced it. I am not aware of what others have.

**Ross Goodwin:** In the European arrest warrant framework decision, there is an article that allows countries to refuse extradition if the conduct is regarded to have taken place in that country. It is certainly something that is compatible with European law and other member states are able to use that. I do not think that we have any statistics on exactly how many have used that. Outside the European arrest warrant situation, I am not sure.

**The Chairman:** What about the Council of Europe category 2 countries? Does that come into their thinking in a more general sense?

**Kenny Bowie:** The point here is that, where there is concurrent jurisdiction, it will always be entirely appropriate for both sides to consider an issue and come to a view as to where prosecution is most appropriate. What has been done by inserting the forum bar into the legislation is to ensure that that system is as transparent as possible and that in the interests of justice the extradition is operating fairly and is seen to be operating fairly in that way.

**Q207 Baroness Hamwee:** Could we stick with the United States for a moment? You will not be surprised that we have had a lot of evidence about prison conditions and the length of time before trial in the States and generally of the more aggressive approach to prosecution. I was a little surprised—I appreciate that this is not your department, Home Secretary—but we have had a note from the Foreign and Commonwealth Office about the monitoring of assurances. The point is relevant to this issue as well. The FCO said that in countries where prison standards are broadly comparable to or exceed those in the UK, we do not generally visit regularly unless there are particular individual circumstances. This approach applies in, for example, western Europe, North America and Australia. We have not heard anything about Australia, but we have had a lot of criticism about the United States and about a number of countries in western Europe. The case of the US goes beyond the European arrest warrant, but I wondered if there was anything else that we should hear from you about the relationship with the US. I do not want to leave a lacuna.

**Rt Hon Theresa May MP:** Obviously, the decisions that the Foreign Office makes about how it approaches the issue of assurances are for the FCO but, as I indicated earlier, we are looking at working with the FCO on the question of assurances and looking at whether more needs to be done in that area. There are other aspects of the relationship with the United States that I hope could also give some greater confidence to people. It is possible within our mutual legal assistance treaty with the United States, for example, for video evidence to be given. There are other parts of the system that can mitigate some of the concerns about people being taken to the United States on extradition.

**Baroness Hamwee:** Clearly, a lot of this is beyond legislation. It is a matter of the relationship between the countries, but we have had some very passionate evidence about the delays and so forth with the United States.

**Rt Hon Theresa May MP:** I recognise that there have been a number of headline cases that have reached the public more generally in relation to the treatment of individuals and their extradition to the United States. Obviously, there are questions about the relationship but, to return to the point that I made earlier, we must never forget that extradition is there for a purpose. It is there because somebody is alleged to have undertaken a criminal act and the other country wishes to bring them to justice. We need arrangements that work well and work smoothly. They must be undertaken in a timely manner and give confidence that people are being properly brought to justice while obviously safeguarding individual rights.

We must make sure that people are not simply being taken to other countries—as we have done with the European arrest warrant—to be in detention for a significant period of time before the evidence is there to be able to charge them and take them to trial.

**Q208 The Chairman:** Do you, in this context, have any way of looking at systems of justice in other countries that are obviously different—their approach is different and their sentencing policy is different? Are there any tests that you apply that determine in your own mind whether things have gone beyond what is actually justice? A lot of criticism that we hear is that it is not right, and the inference behind it is that it is because it is not what we do here.

**Baroness Jay of Paddington:** Can I add a small point to that, which I was going to make at the end of Lady Hamwee's question? One of the problems about the States which is suggested to us is the question of local justice being so politicised. Local judges are running for re-election, there is a great deal of build-up about that sort of thing in a particular area and there is no federal standard of jurisdiction. It is very much down to the local state jurisdiction and even, below that, to politics. That is one of the problems.

**Rt Hon Theresa May MP:** Yes. If I may take those two together, you asked, Chairman, what we did in the Home Office in terms of looking at these issues and looking at standards of justice elsewhere. However, it is not my job as Home Secretary on any individual extradition request to make those judgments. There is a certain set of criteria that I have to look at. I think that there are four issues that have to be addressed to make an initial decision about an extradition request. Beyond that, it is for the courts to determine whether the extradition request should be accepted. The courts can take into account these very issues about what the individual will be taken to in terms of the justice system that they are being extradited into and how that would operate. It is right that our courts take that decision and are able to look at all the evidence presented to them.

**The Chairman:** Having lost your discretion in the system—as Home Secretary you presided over that change, so I imagine you must approve of it—is this a consequence of that?

**Rt Hon Theresa May MP:** Yes. What I took away was the ability of the Home Secretary to make a final human rights decision and put that decision to the courts. That is right. In the course of my time, I have made one very particular decision in relation to an extradition request, which people are well aware of, on that human rights ground. But it is preferable for the courts to be able to look at all that evidence with the experience that they have of looking at these issues. It means that you do not get intense pressure on a single individual



to move this way or that way. A lot of pressure can come from both sides of the argument, so it is right that cases are taken appropriately through the courts so that, with their experience and ability to look at all the evidence, they can look at that properly.

**Q209 Lord Brown of Eaton-under-Heywood:** Home Secretary, the final question listed is about category 2 designations and whether they should now be reviewed. We are talking here about further designations—countries that are not required to provide a prima facie case in order to justify an extradition from this country. Basically, the countries that we are concerned with are the non-EU states that have signed up to the European Convention on Extradition—the other members of the Council of Europe, together with one or two others that have signed up, such as Israel, South Africa and South Korea, as well as a few favoured nations, such as Australia, New Zealand, Canada and the United States. The Scott Baker review, as you know, recommended that from time to time the category 2 further designations should be reviewed. As you know, we were told by the Minister earlier in our sessions that no such review is yet in prospect. Could I have your response on this? Certain of these countries are serial offenders in terms of extradition requests, which routinely now apparently we are refusing on account largely of prison conditions but also because of the risks of ill treatment of prisoners by the police and other state authorities and so forth on return. I am able to name the miscreants. Russia, Ukraine, Moldova and Turkey are the main offenders. What, if anything, are we doing to review categorisation? What powers do we have in that regard? Is it necessary, given the other defences, such as human rights defences and so forth, that are built into legislation?

**Mrs Theresa May MP:** You are right that the Baker review raised this issue. We made it clear that we would look at the designation of category 2 territories and that work is now under way in the Home Office. It would perhaps be helpful to set a couple of aspects of that work in context. First, the Scott Baker report did not recommend that we introduce a requirement for prima facie evidence to be provided. The report said: “No evidence was presented to us to suggest that European arrest warrants are being issued in cases where there is insufficient evidence ... we consider that the extradition judges are able to subject extradition cases to scrutiny and ensure that any abusive ... request is identified and dealt with appropriately”. It is also worth bearing in mind that, just because a country is designated under part 2, it obviously does not mean that an extradition request is going to be automatically granted, as

you indicated yourself. Some of the reforms that I have introduced will have an impact here as well, the forum bar being one of them.

The other aspect is that we have to look at this in the context of our international obligations. Where countries have ratified the 1957 European Convention on Extradition, we have made it clear that there will be no requirement for prima facie evidence to be provided. Some other treaties also remove the need for prima facie evidence to be provided, so no review will be able to lead to changes in that respect. Some of the countries that may be of interest to you may fall into that area. But we are reviewing whether we have the right designations in place—that could operate both ways, in terms of countries on the list and those not on the list but which might be added to it.

**Lord Brown of Eaton-under-Heywood:** I absolutely understand your answer, but if the review cannot impose the requirement to produce prima facie evidence, what can it do? What can your review achieve?

**Kenny Bowie:** It is important to realise that there are two different levels of category 2 designations. One class, if you like, of designation removes the need for prima facie evidence and the second class of category designations means that we have extradition arrangements with the country.

**Lord Brown of Eaton-under-Heywood:** Yes, they are within part 2 of the legislation.

**Kenny Bowie:** We can have a look at all of that.

**Lord Brown of Eaton-under-Heywood:** So we are reviewing both categories, are we?

**Kenny Bowie:** We are reviewing both categories. Some of the initial work has been done looking at the 1957 convention. For example, we know that San Marino and—

**Lord Brown of Eaton-under-Heywood:** San Marino, as I understand it, and Monaco are coming in under the 1957 convention.

**Kenny Bowie:** Yes, that is one element—

**Lord Brown of Eaton-under-Heywood:** But in so far as you are reviewing those which are not further designated, you might simply take them out of the legislation altogether and then have to leave it to ad hoc arrangements on a case-by-case basis. Is that what you are contemplating?

**Mrs Theresa May MP:** The point is that the review will look at whether we have the right countries in the list and whether there are any that need to be added. We will look at those

countries that are in the list. When the review is completed, we would, as I understand it, bring changes to Parliament for consideration.

**The Chairman:** Do you know what the timeframe might be?

**Mrs Theresa May MP:** We hope to conclude it by the end of this Parliament. We would use the affirmative procedure to bring the instrument before Parliament, so there would obviously be scrutiny at that stage as well.

**Lord Empey:** Secretary of State, I presume that in reviewing these categories you are relying heavily on information supplied by the Foreign Office. Are you using your own, additional sources?

**Mrs Theresa May MP:** We would be doing both. Obviously the Foreign Office would be a major source of information for us in relation to this, but we would also look at the experience: the cases that have been looked at and the decisions that have been taken in individual cases, and therefore what has been happening in relation to individual countries.

**The Chairman:** As far as the European convention is concerned, once we have signed up, we cannot retrospectively re-juggle our position, can we? We either leave it and start again or take it as it stands.

**Rt Hon Theresa May MP:** Yes.

**Q210 Lord Hart of Chilton:** Many witnesses have come to this Committee to complain that there is no automatic right to legal aid in extradition cases and they have told us that that matter should be changed. I know that legal aid is not a policy matter for you, but I would like to hear your comments. It is not really a question of cost-benefit analysis, as the MoJ officials have told us. It is important in extradition cases where people are so vulnerable. The view has been expressed that in the interests of justice legal aid should be automatic.

**Rt Hon Theresa May MP:** It is obviously a matter for the Ministry of Justice to look at the question of legal aid. Obviously, the Government have been making changes over the past few years to the operation of legal aid. It is not automatic, but from the figures that I have been given, which might be of help to the Committee, between the start of October 2012 and the end of July 2014 nearly 2,000 individuals applied for criminal legal aid to fund representation at extradition hearings taking place at Westminster Magistrates' Court. In approximately 95% of those cases, criminal legal aid was granted to the individual.

**Lord Hart of Chilton:** It would be very interesting if we could have those figures to look at. There is a question of proportions here—how many of how many. We would be very grateful if you would let us have those.

**Rt Hon Theresa May MP:** Yes, certainly we can arrange for the Ministry of Justice to give those figures to you. Also, I understand that, if an individual is held to be financially ineligible for criminal legal aid, a hardship review mechanism acts as a safety net for those who still maintain that they are unable to pay privately for their defence costs, so there are other mechanisms as well. Perhaps if I may, Chairman, I will ask the Ministry of Justice to set this out more fully to the Committee so that you can see the mechanisms.

**Lord Hart of Chilton:** There is also a question of speed. The length of time that it takes to process that sort of operation eats into the time when individuals are in their most sensitive position.

**Rt Hon Theresa May MP:** Yes.

**The Chairman:** That is something that we are interested in. We have also had quite a lot of evidence that, if you can get someone properly represented legally right at the outset, you can substantially shorten the period of the process and deal with it in a much better way. If it is possible to break the figures down to show how long it takes once you are in the system, that would be very helpful.

**Rt Hon Theresa May MP:** Yes. I will ask that.

**Baroness Jay of Paddington:** There is also the question of how that might potentially reduce the number of cases on appeal. That has also been suggested to us.

**Q211 The Chairman:** We are drawing the session to a conclusion. Thank you for being so crisp and answering our questions so much to the point. Is there anything else that you would like to say to us that you have not said in response to questions, which have ranged quite widely, I think?

**Rt Hon Theresa May MP:** No thank you, Chairman. I think that we have covered everything that I felt needed to be covered.

**The Chairman:** Does the Committee have any further questions for the Home Secretary? You told us about the assurances review that is going on. If you could give us some details of the timetable, that would be very helpful to us.

**Rt Hon Theresa May MP:** We will certainly do that. There are a number of issues that I have undertaken to write to the Committee on and we will certainly do that.

**The Chairman:** I thank all three of you very much indeed.