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HOUSE OF COMMONS
LONDON SW1A 0AA

Rt Hon Sir Scott Baker
Judicial Correspondence Unit
Home Office
2 Marsham Street
London SW1P 4DF

Thursday 27th January 2011

Dear Sir Scott Baker,

I am pleased to enclose my report on the European Arrest Warrant for submission to your review of the United Kingdom's Extradition Arrangements.

Please do not hesitate to contact me if you would like further information or to make representations in person.

Kind regards,

Nick de Bois MP

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Submission to:

Rt. Hon. Sir Scott Baker's review of the United Kingdom's Extradition Arrangements

By **Nick de Bois MP**

All References are formally credited at the end of this submission in the HARVARD format.

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Introduction

In the last decade, the entire structure of criminal justice in the European Union has been changed. This change has not only taken place at a supranational level but also at the Member State level. Each year thousands of 'fugitives' are transferred between European Union Member States under the European Arrest Warrant to face trials and serve prison sentences. The introduction of the European Arrest Warrant combined with subsequent legislation such as the European Investigation Order has facilitated an ever greater exchange of information and resources between judicial systems in the European Union.

European wide justice cooperation has clear benefits in the fight against crime, making it easier to ensure that the guilty face the appropriate penalty. While the cooperation and expediency of the European Arrest Warrant can be valued, that cooperation and expediency must not take precedence at the expense of fundamental judicial fairness and human rights. Any aim to ensure cooperation and expediency must demonstrate a respect for the rule of law at the heart of European cooperation but currently that very respect is being undermined by the European Arrest Warrant.

After the introduction of the European Arrest Warrant, citizens from all over the European Union are being sent to other European Union Member States in order to face both investigation and trial for minor offences or to serve prison sentences imposed after unfair trials. In the case of my constituent, Mr. Andrew Symeou, the European Arrest Warrant was the beginning of twenty month ordeal in Greece, whereby his fundamental rights to a fair trial were ignored, his bail was unfairly refused because of his nationality and he appears to have suffered a breach of the European Convention on Human Rights.

Our submission intends to look at the failing of the European Arrest Warrant by drawing on the case of Mr. Andrew Symeou. We feel that Mr. Andrew Symeou's case illustrates how the European Arrest Warrant must be reformed in order for it to deliver its intended aims rather than undermine European wide justice cooperation and create the potential for miscarriages of justice.

This submission does not intend to be passive but to recommend specific changes for consideration in Lord Justice Scott Baker's review. Throughout this submission we have intended to show the human cost to my constituent and his family of the European Arrest Warrant. It must be considered deeply ironic that a system that was designed to increase the expediency of extradition has led to an intolerable judicial delay so that there has been no justice for both the defendant or the victim and their family.

Nick De Bois MP

17th January 2011

Executive Summary

Key Points Examined

- The inconsistent application of the European Arrest Warrant throughout European Union Member States caused by legislative flaws and mutual recognition in judicial matters.
- The irrelevance of prima fascia evidence in relation to European Arrest Warrant requests and enactments.
- The lack of a uniformed approach to bail and legal aid throughout the European Union.
- The potential threat the European Arrest Warrant may be to human rights in relation to the European Convention on Human Rights.

- Conclusions Reached

- The adoption of all seven optional clauses contained within Article 4 of with the European Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States (2002/584/JHA).
- The redevelopment and restructuring of European Union mutual recognition in judicial matters into European Union mutual understanding in judicial matters.
- The re-introduction of limited prima fascia evidence examination by a non-political judicial extradition tribunal.
- The introduction of European Union wide bail agreements and the complete adherence to Article 47 of the Charter of Fundamental Rights of the European Union in all European Union Member States.

Opening Statement of Facts

Discussions relating to the simplifying of extradition between European Union Member States had begun well before the September 11th terrorist attacks in the United States of America but this catastrophic global event sped up these discussions. The basic formation for a European wide arrest warrant was established at an intergovernmental level in the form of a European Union Framework Decision by the European Union's Council of Ministers. The draft Framework Decision agreed in principle by the Justice and Home Affairs Council of the European Union was approved by the United Kingdom government in December 2001[1] and subsequently by the European Parliament in February 2002[2]. The implementation of the proposed European Arrest Warrant was achieved by the Extradition Act 2003, the relevant parts of which came into force in January 2004.

In theory, the European Arrest Warrant applies to all criminal offences. In practice, each European Union Member State is able to issue a European Arrest Warrant when an individual 'fugitive' is being prosecuted for a criminal offence punishable by a custodial sentence of over one year or has already been sentenced to a custodial or detention order exceeding four months. A list of thirty-two 'serious' criminal offences was drawn up, all of which would involve detention or a custodial sentence of over three years, that do not require any verification into the dual criminality of the act[3].

The thirty-two offences that require no dual criminality test are:

Participation in a criminal organisation; Terrorism; Trafficking in human beings; Sexual exploitation of children and child pornography; Illicit trafficking in narcotic drugs and psychotropic substances; Illegal trafficking in weapons, munitions and explosives; Corruption; Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26th July 1995 on the protection of the European Communities' financial interests; Laundering the proceeds of crime; Counterfeiting the currency, including the Euro; Computer related crime; Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties; Facilitation of unauthorised entry and residence; Murder, grievous bodily injury; Illicit trade in human organs and tissue; Kidnapping, illegal restraint and hostage-taking; Racism and xenophobia[4]; Organised or armed robbery; Illicit trafficking in cultural goods, including antiques and works of art; Swindling[5]; 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.

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[1] No European Union Member State was granted the opportunity to oppose or amend the European Union Framework Decision.
[2] Under European Union procedures, the European Parliament had to be consulted about the introduction of the Framework Decision and did suggest amendments to the original formation of the proposed European Arrest Warrant. The European Council of Ministers was under no obligation to act upon these amendments.
[3] Also known as 'double criminality', is the principle that extradition will be refused for acts alleged as criminal in one state but not defined as criminal in the judicial jurisdiction of the state receiving the extradition request.
[4] No United Kingdom law explicitly refers to Xenophobia.
[5] No United Kingdom law explicitly refers to Swindling.

Any individual in any European Union Member State may be subject to a European Arrest Warrant. A court official in any European Union Member State may issue a European Arrest Warrant to the courts within which the accused 'fugitive' is located and the warrant must be executed within one month of its issue. The European Arrest Warrant does not include any provision allowing the European Union Member State's judiciary that receives a warrant an opportunity to examine any prima facie evidence relating to the criminal act the 'fugitive' is alleged to be involved with. In theory, there is no reason to refuse a European Arrest Warrant request but in practice European Union Member states tend to have opted into elements of Article 4 of the European Union Framework Decision relating to the dual criminality of criminal acts.

Under article three of the European Arrest Warrant Framework Decision there are only three grounds for the mandatory non-execution of a European Arrest Warrant, they are:

- If the offence on which the arrest warrant is based is covered by amnesty in the executing member state, where the state has jurisdiction to prosecute the offence under its own criminal law;

- If the executing judicial authority is informed that the requested person has been finally judged by a member state in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing member state;

- If the person who is subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing state.

Article Four of the European Union Framework Decision also creates seven optional grounds for the non-execution of a European Arrest Warrant of which European Union Member States are under no obligation to implement, they are:

- If, in one of the cases referred to in Article 2(4)[6], the act on which the European arrest warrant is based does not constituent an offence under the law of the executing Member State; however in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the found that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same types of rules as regards to taxes, duties and customs and exchange regulations as the law of the issuing Member State;

- Where the person who is subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;

[6] The criminal act is not one of the thirty two defined crimes that does not require a dual criminal test but is considered criminal in both the European Union Member State requesting extradition and the European Union Member State receiving the extradition request.

- Where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgement has been passed upon the requested person in a Member state, in respect of the same acts, which prevents further proceedings;

- Where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;

- I the executing judicial authority is informed that the requested person has been finally judged by a third state in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

- If the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member state and that State undertakes to execute the sentence or detention order in accordance with its domestic law;

- Where the European arrest warrant relates to offences which:

  (a) Are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

  (b) Have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Originally the European Union Framework Decision made no reference to any European Arrest Warrant requests based upon trials that were carried out in absentia. Only after a Council Framework Decision in 2009 was any reference to trials carried out without the 'fugitive' present. Article Four A was inserted to allow for the rejections of European Arrest Warrant requests in relation to trails carried out in absentia, the amendments are:

- The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or detention order is the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State;

(a) In due time:

  (i) Either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner

that it was unequivocally established that he or she was aware of the scheduled trial;
And

(ii) Was informed that a decision may be handed down if he or she does not appear for the trial;

Or

(b) Being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at trial, and was indeed defended by that counsellor at the trial;

Or

(c) After being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;

(i) Expressly stated that he or she does not contest the decision;

Or

(ii) Did not request a retail or appeal within the applicable time frame;

(d) Was not personally served with the decision but:

(i) Will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;

And

(ii) Will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

- In case the European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1(d) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, he or she may, when being informed about the content of the European arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person

sought. The request of the person sought shall neither delay the surrender procedure nor delay the decision to execute the European arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

- In case a person is surrendered under the conditions of paragraph (1)(d) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.

In Support of a 'European Arrest Warrant"

There is a clear and defined need for a European Arrest Warrant in principle. Before the introduction of the Extradition Act 2003, the United Kingdom relied upon the Extradition Act 1989 which was implemented in order to comply with the European Convention on Extradition. There are clear examples of procedural failings that resulted from the Extradition Act 1989 including the significant and substantial delays experienced when a fugitive was sought across international borders for trial in the United Kingdom. The Extradition Act 1989 also still allowed European Union Member States to block the extradition of their own citizens. In theory a European wide arrest warrant, that encourages expediency, has proven to be beneficial in certain high-profile cases[7].

Before the introduction of the European Arrest Warrant barriers existed that protected fugitives from justice in the nation they were suspected of committing their crimes. Individuals could easily abscond from justice and remain in a new location, secure of the fact that extradition proceedings were likely never to occur. The European Arrest Warrant has removed many barriers to extradition and has updated or streamlined the extradition process between European Union Member States.

A collective process of extradition between European Union Member States is a necessary part of any judicial approach by the European Union. A correctly formulated and implemented European Arrest Warrant is an invaluable tool for European Union judicial organisations to continue the fight against cross border crime and those who attempt to abscond from justice.

[7] These high-profile cases include the successful extradition of Osman Hussain, one of the suspects in the 21st July 2005 London bombings back to the United Kingdom from Italy.

The Inconsistencies in the Application of the European Arrest Warrant

Legislative Inconsistencies

Inconsistencies are inherent within the Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States (2002/584/JHA). Contained in Article 4 are seven optional clauses that European Union Member States may choose whether or not to include in their own national legislation based upon the need for a European Arrest Warrant. The United Kingdom chose to opt into only one[8] of the seven optional clauses. The very nature of optional clauses allows for differing approaches to European Arrest Warrants in each European Union Member State.

It makes little legislative sense to include seven optional clauses for the implementation of a supranational piece of legislation because this will, as has been evident, lead to different approaches and methods of implementation existing. If the Council of Ministers felt it important that the issues concerned within the seven optional causes needed to exist within the legislation, why did they simply not include them within Article 3[9]?

Judicial Inconsistencies

The European Council meeting that was held in Tampere on 15th-16th October 1999 endorsed the principle of mutual recognition and expressed the view that it should become the cornerstone in both criminal and civil matters within the European Union. There are clear advantages of mutual recognition within an area where persons can cross relatively freely from one legislative jurisdiction to another. Mutual recognition in judicial matters should therefore encourage the enforcement of judicial decisions in a timelier manner and with greater certainty. This is due to the amount of reduced discretion so that the grounds for refusal are far smaller.

Mutual recognition in judicial matters does not take into consideration the vast differences in judicial systems throughout the European Union. It considers each system interchangeable with one another and thus predicts that any judicial procedure or outcome would be the same no matter the location within the European Union. Examples of where mutual recognition is clearly unrealistic can be seen in certain European Union Member States use of investigatory magistrates.

France, Italy, Germany, Spain and Belgium all have investigatory magistrates. This allows for an individual to be held in custody for long periods of times while an investigation into their supposed criminal acts is carried out. This practice is entirely against the well-established British legal understanding of an individual being innocent until proven guilty. The method of using investigatory magistrates deliberately intends to build up psychological pressure on the detained individual in

[8] Article 4, Point 1 – Insuring the dual criminality of acts not included in the thirty two pre-defined criminal acts.
[9] Article 3 contains the three obligatory reasons for the refusal to enact or carry out a European Arrest Warrant.

order for them to strike a bargain with the prosecutor and therefore concede guilt. Dominique Strauss-Kahn[10] suggested that the French system of investigatory magistrates showed a real unfairness in French judicial proceedings, he said: "In our system you are presumed innocent until declared guilty. The reality is you are seen as guilty from the moment the judicial system is interested in you".

The process of involving investigatory magistrates alone should be a reason why judicial mutual recognition is bound to failure and creates an unfair situation for states who do not conduct such judicial actions. With mutual recognition being at the heart of legislation like the European Arrest Warrant, European Union Member States are going to have no choice but to extradite individuals to legal systems that they may not consider as fair or humane as their own.

Judicial Activism and Legal Inconsistencies

Judicial activism is a description of judicial rulings that are considered to contain decisions based upon personal or political considerations rather than existing law. Judicial activism is common place within the European Court of Justice as it strives to encourage greater European integration. Other European Union Member States, such as Ireland, also encourage and actively engage in judicial activism. This allows for individual judges to argue points of law in order to achieve certain personal or political goals thus debate the formulation of and application of certain laws.

A clear example of judicial activism related to the European Arrest Warrant can be seen in the case of the Irish citizen Ciaran Tobin. While there are only three clearly defined reasons[11] as to why a European Union Member State may automatically refuse an extradition request, an Irish court decided to argue a point of law which would therefore not allow them to extradite Ciaran Tobin to Hungary where he was expected to serve a prison sentence he had been given in absentia.

Ciaran Tobin, an Irish citizen working in Hungary, was driving through the Hungarian town of Leányfalu in April 2000 at 70km/h in a 50km/h zone when he lost control of his vehicle, drove onto the pavement and struck two children (Petra, aged two and Márton, aged 5) and killed them instantly. Although during the investigation into the deaths Ciaran Tobin's passport was confiscated, it was returned upon his request because he wished to attend the wedding of his wife's sister. Ciaran Tobin was instructed to deposit an insurance sum of five-hundred-thousand Hungarian forint, as proscribed by the Hungarian Criminal Procedure Code. Ciaran Tobin also directed his Hungarian lawyer to receive his official letters while his trial continued in his absence. In 2002, a Hungarian court sentence Ciaran Tobin in absentia to a mandatory prison term of three years. Ciaran Tobin's lawyers attempted to have him granted an official pardon by the Hungarian President but these requests were denied. In 2005 a Hungarian court of appeal granted the possibility of release on parole after the serving of one and a half years. At this point the Hungarian courts called upon Ciaran Tobin to present himself for the commencement of his sentence but he failed to return to Hungary.

A European Arrest Warrant was issued in order to return Ciaran Tobin to Hungary but it was rejected in its first instance by the Irish High Court in January 2007.The basis of the refusal was that Ciaran

[10] Finance and Economy Minister of France (1997 – 1999), current Managing Director of the International Monetary Fund.
[11] These reasons for the automatic refusal of extradition are contained in Article 3 of the Framework Decision.

Tobin had not fled Hungary but left it legally so therefore could not be extradited under the European Arrest Warrant. The Irish Supreme Court upheld this judgement in July 2007 thus making the decision not to extradite final. The decision not to extradite was based upon the timing of Ciaran Tobin's departure from Hungary. The Irish judge ruled that as he had been allowed to leave Hungary during the criminal proceedings but before the issue of a sentence, he could not be considered to have fled Hungary. The Irish judge found that European legislators had deliberately placed the term 'flee' within the European Framework Decision for the European Arrest Warrant rather than the more neutral word "leave". Since the Judge believed CT to have left Hungary rather than fled he felt that there were no grounds for extradition under the Hungarian European Arrest Warrant.

The case of Ciaran Tobin is both a clear example of judicial activism in the European Union and also of how the European Arrest Warrant may be used by a judicially active court within a Member State to not abide by the legislation or the supposed mutual recognition between states. The case of Ciaran Tobin shows both a failure in mutual recognition and mutual trust between European Union Member States.

The Irrelevance of Prima Fascia Evidence and the European Arrest Warrant

The phrase 'prima fascia' roughly translates to 'on the face of it' or 'at first sight'. The term is used in modern English to signify that on first examination, a matter appears to be self-evident from the facts. This therefore means that prima fascia evidence, presented in a court of law, would be sufficient enough to prove a particular proposition or fact unless it was formally rebutted. Legal proceedings normally require for prima facia evidence to exist in order for it to be tested and a ruling created. The introduction of the European Arrest Warrant offers no place or need for prima fascia evidence to be presented or examined before an extradition takes place.

Prima Fascia Evidence in the British Judicial Process

The Crown Prosecution Service and their Crown Prosecutors make the decision to charge individuals in the United Kingdom with criminal offences in complex criminal cases. The Crown Prosecution Service have produced a public document called 'Code for Crown Prosecutors' which sets out the basic principles that Crown Prosecutors must follow when making decisions on whether or not to bring about criminal charges. The 'Code for Crown Prosecutors' sits alongside the 'Core Quality Standards' booklet and these two documents allow British citizens to know what Crown Prosecutors do, including how they make their decisions and the level of service that the Crown Prosecution Service is providing.

While the Crown Prosecution Service acknowledges that each criminal case is different and therefore must be considered on its own facts and merits, there are certain generalised principles that apply to the way in which the Crown Prosecutors must approach the case and their eventual decisions. The decisions made on each case must be fair, independent and objective. It is the duty of the Crown Prosecution Service and the Crown Prosecutors to ensure that the correct person is prosecuted for the right offence. Following these procedures, the Crown Prosecution will always act in the interest of justice and not only for the purpose of obtaining a conviction.

When making a decision on charging an individual, the Crown Prosecution Service will always decide whether or not there is enough valid prima fascia evidence proving the potential defendant's guilt. The quality and reliability of the evidence will also be investigated. There will also be a decision made as to whether or not any possible prosecution would be within the public interest.

The Crown Prosecution Service will only progress with criminal proceedings if there is considered to be a realistic prospect of conviction due to the prima fascia evidence that has been collated. A realistic prospect of conviction is an objective test – this means that a jury or bench of magistrates hearing a case alone, when properly directed and acting within accordance of the law, is more likely than not to convict the defendant of the alleged charge.

When making the decision to prosecute, the Crown Prosecution Service must decide on whether the prima fascia evidence provided is admissible in court or whether it may be considered as unreliable. This therefore means that before any judicial proceedings commence, all potential evidence has

been assessed for its quality and reliability by the Crown Prosecution Service. The Crown Prosecution Service will not proceed with criminal charges if there is not to be a realistic prospect of conviction, no matter how serious of sensitive any alleged crimes may be.

Another aspect that ensures the Crown Prosecution Service makes the correct decisions on whether to bring about criminal charges is their relationship with the Police. Even though both the Police and Crown Prosecution Service work closely with one another they are ultimately independent from one another and the final responsibility for the decision as to whether or not to proceed with a criminal prosecution rests entirely with the Crown Prosecution Service and their assessment of the available prima fascia evidence.

The European Union and Prima Fascia Evidence in Criminal Cases Requiring Extradition

Before the introduction of the Extradition Act 1989, British courts would examine all available prima fascia evidence before commencing extradition proceedings against an individual. Any state wishing to extradite a British citizen had to:

- Demonstrate that the individual wanted for extradition had a case to answer[12].
- Demonstrate that the alleged criminal activity was illegal under British law.
- Demonstrate to the Home Secretary that the accused individual would experience a fair trial in the state requesting their extradition.

The Extradition Act 1989 was implemented in order to satisfy the obligations created for European Union Member states under the European Convention on Extradition. This act removed the requirements for Judges to examine prima fascia evidence before commencing extradition proceedings but still maintained limited judicial powers for the British courts and Home Secretary. For example, if the Home Secretary felt that an individual's intended extradition was oppressive or unjust they had the ability to deny an extradition request.

With the introduction of the Extradition Act 2003, allowing the United Kingdom to conform to the European Council Framework Decision on the European Arrest Warrant, this final political and judicial safeguard was removed in order to secure the timely extradition of fugitives between European Union Member States.

Prima Fascia Evidence and the European Arrest Warrant

Provided that a requesting European Union Member State has correctly filled out the European Arrest Warrant form, unless the request breaches any point in Article 3[13] or Article 4[14], an extradition must take place. The European Arrest Warrant has no provisions nor formal obligation to ensure that prima fascia evidence exists before extradition must take place. All that is required is that the

[12] This involved the process of presenting prima fascia evidence for examination.
[13] Article 3 contains three points for the mandatory automatic refusal of an extradition request.
[14] Article 4 contains seven optional points for the mandatory automatic refusal of an extradition request. States may choose which points of Article 4 they formally adopt within their own national legislation.

judicial authority in the European Union Member State requesting extradition should detail the criminal offence believed to have been committed (usually by ticking one of the 32 criminal offences that do not require any form of dual criminality testing) and indicate the length of the sentence to be expected. The existence of prima fascia evidence, its examination or investigation does not play any role in the process of enacting or abiding by a European Arrest Warrant.

The existence and examination of prima fascia evidence is a fundamental part of the British judicial process. Without the existence of prima fascia evidence the Crown Prosecution Service may bring no charges against an individual and without the examination of prima fascia evidence no individual may be convicted by a jury or bench of magistrates. The European Arrest Warrant and the Extradition Act 2003 removes the right of an individual suspected of committing a crime abroad but located in the United Kingdom or a British citizen located elsewhere in the European Union to be presented with the prima fascia evidence of their supposed criminal acts before they are removed from location and sent to another. While it is not deniable that the examination of prima fascia will slow down extradition proceedings between European Union Member States, would a slower system that maintains the value of British justice not be preferable compared to an expedient system that allows for individuals to be extradited with the existence of little or no prima fascia evidence or prima fascia evidence that's reliability is severely questionable? If an individual would be unable to be prosecuted by the Crown Prosecution Service in the United Kingdom they should have the possibility of being extradited to another European Union Member State in order to face prosecution for the supposed criminal offences.

The lack of a uniformed approach to bail and legal aid throughout the European Union

With an acceptance of mutual recognition in judicial matters within the European Union, it should be expected that all judicial actions and processes within the European Union should be incredibly similar if not identical. This is clearly not the current state of affairs and not only shows a clear flaw in the acceptance of mutual recognition but also gives the European Arrest Warrant yet another flaw. The European Arrest Warrant contains no aspect that directly looks at the bail provisions for transferred 'fugitives' nor does it guarantee any formal access to legal aid (even though legal aid is technically universally provided for those who lack sufficient resources in accordance with Article 47 of the Charter of Fundamental Rights of the European Union).

Lack of European Union wide bail provisions

In the United Kingdom, the courts always retain the right to grant bail unless they feel there is a possibility of an individual failing to attend court; committing further offences or interfering with witnesses. When making a decision on whether or not to grant bail a court must also take into consideration the seriousness of the charge; the strength of evidence; an individual's background and community ties; any previous convictions an individual may have – particularly in relation to failing to attend court and whether or not the individual is currently serving a custodial sentence or detention order.

Even if a court in the United Kingdom has concerned related to the above criteria they may still grant bail so long as certain bail conditions are met by the individual wishing to be granted bail. These conditions may include residency at a bail hostel, the payment of a cash security into court or providing a surety. When conditions are attached to bail or bail is refused a court must provide a reason as to why this is the case. In cases involving rape or homicide a United Kingdom court must also provide reasons as to why bail is being granted.

If an individual is not granted bail and therefore remanded in British custody, strict time limits are imposed to the case. Once the custody time limits have passed the court must release the individual on bail unless the prosecution has obtained an extension from the court beforehand. The time limits imposed are: fifty-six days for Magistrates Court; seventy says for committal to Crown Court and one-hundred and twelve days from committal to Crown Court trial. If any of these limits are to be extended the prosecution must justify to the court why there is a further delaying in bringing the case to trial.

Currently the European Union Area of Freedom, Security and Justice[15] does not provide any formal regulation related to European Union bail. With no provisions for bail being driven at a European level, each individual European Union Member State has the ability to decide how they wish to enact

[15] Originally part of the Third Pillar of the European Union established in the Maastricht Treaty (1992) known as 'Justice and Home Affairs', was subsequently renamed 'Police and Judicial Co-Operation in Criminal Matters' in the Amsterdam Treaty (1997). Was renamed 'Area of Freedom, Security and Justice' as part of the Lisbon Treaty's (2007) abandonment of the Three Pillar System.

their own bail provisions. In 2004, the Commission of the European Communities prepared a proposal for a European Council Framework Decision on 'Certain Procedural Rights in Criminal Proceedings throughout the European Union' which would have allowed for an agreed method of bail provisions throughout the European Union along with enshrining other rights related to criminal prosecution in law.

The European Council rejected the proposals for European-wide bail provisions and has so far only offered to consider European-wide bail rather than legislate for it. This situation has allowed for a significant number of foreign citizens[16] to be held, without bail, due to their nationality and their perceived threat of absconding. This perceived threat works against the European Arrest Warrant because of one simple fact: if an individual absconded they could simply be returned under a European Arrest Warrant. The denial of bail handicaps a potential defendant in the gathering of their own evidence and the preparation of their own defence – this therefore always puts the prosecution at an unfair advantage. Obviously it is agreeable that those suspected of the most heinous crimes are denied bail but this should be decided upon solely in relation to their suspected crimes, not their nationality.

The lack of a European-wide bail agreement appears to show little faith in the European Arrest Warrant. The European Arrest Warrant in principle allows for the transportation of fugitives between European Union Member States in order for them to face justice in the European Union Member State they are suspected to have committed a crime. Any refusal to grant bail in their home nation shows that there is a fear of an individual abstaining from justice – it also shows a mistrust of the current European Arrest Warrant system to guarantee an individual's attendance at court.

Lack of a uniformed approach to legal aid provisions

In January 2003, the European Council adopted a directive to improve the access to justice in cross-border disputes throughout the European Union by establishing minimum common rules relating to legal aid provisions. The directive[17] established the principle that individuals who do not have sufficient resources to defend their rights in law would be entitled to the appropriate legal aid. The directive laid down three clear points which were expected to be adhered to for the provision of legal aid to be considered appropriate, these were:

- Access to pre-litigation advice
- Legal assistance and representation in court
- Exemption from, or assistance with, the cost of proceedings, including the costs connected with the cross-border nature of the case.
- While this legislation does exist and has been adopted by all European Union Member States there is no agreed format through which legal aid should be provided. This allows the system to be left within the jurisdiction of individual European Union Member States to decide the amount of funds provided and the quality of legal provisions provided. This has often created a two tier systems where nationals of a European Union Member State are provided with superior legal aid compared to that of a non-national suspected of the same criminal offence. This clearly puts the non-national at a judicial disadvantage.

[16] Two examples of foreign citizens denied bail are Andrew Syemou and Julian Assange.
[17] Article 47 of the Charter of Fundamental Rights of the European Union

The European Union has acknowledged the lack of adherence to Article 47 of the Charter of Fundamental Rights of the European Union because Viviane Reding[18], the European Commissioner for Justice, Fundamental Rights and Citizenship, has pledged to set mandatory levels of legal aid for civil and criminal cases for European Union Member States from 2013. Viviane Reding told a meeting of the Council of Bars and Law Societies of Europe[19] in December 2010 that access to justice was a 'fundamental right' and that in line with Article 47[20] all European Union governments must make legal aid funding available to litigants and defendants in civil and criminal cases who otherwise could not afford representation. Viviane Reding also acknowledged that currently the approach to legal aid amongst European Union Member States differed greatly in fairness and equality and that the practice of offering newly qualified or unskilled lawyers must end.

Without the European Union being able to ensure that the judicial practices amongst European Union Member States are entirely the same or incredibly similar the process of mutual recognition will always be rendered redundant. If the European Union is going to enact legislation to strengthen the judicial fairness of framework agreements or directives then there must be sufficient recourses for those European Union Member States who choose to delay or not enact them. Currently there is no such process and this allows judicial legislation like the European Arrest Warrant to be enacted within an unfair system that will critically damage the possible defence of potential defendants facing criminal trials outside their own national European Union Member State.

[18] Former member of the Luxembourg Parliament; Former member of the Benelux Parliament; Former European Commissioner for Education and Culture (1999 – 2004); Former European Commissioner for Information Society and Media (2004 – 2010).
[19] An organisation representing around one million European lawyers from 31 member countries and a further 11 observer countries.
[20] Article 47 of the Charter of Fundamental Rights of the European Union.

The potential threat the European Arrest Warrant may be to human rights in relation to the European Convention on Human Rights

The European Convention on Human Rights was drafted in 1950 and came into force in 1953. All Council of Europe members were expected to ratify and abide by the conventions. Article 5 of the European Convention on Human Rights provides that everyone have the right to liberty and security of person. Article 5procides the right to liberty subject only to lawful arrest or detention under certain circumstances such as the investigation of a criminal act or to carry out the fulfilment of a granted sentence. Article 5 reads as follows:

Article 5 – Right to Liberty and Security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. the lawful detention of a person after conviction by a competent court;

b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f. the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

One clear area that the European Arrest Warrant must be considered to be in breach of Article 5 is point two. While the European Arrest Warrant is concerned with extradition between European Union Member States it makes no note of language barriers. An individual will be transferred between two European Union Member States, both with differing languages, and there is no guarantee under the European Arrest Warrant, just under the European Convention on Human Rights, that the proceedings which take place will be carried out in a language understood by the extradited individual.

Using the case of Andrew Symeou as an example, there have been numerous breaches of Point two of Article 5. On multiple occasions Andrew Symeou has only had information presented to him in Greek (which he does not fluently speak). This is therefore putting him at a disadvantage in preparing his defence and attempting to understand the criminal acts he has been accused of. When translations of material have been provided, there has always been a substantial delay in this.

Without a direction mention of the European Convention on Human Rights, any legislation relating to the European Arrest Warrant will be encouraging further breeches. There should be an inserted clause that reaffirms an individual's right to have extradition and criminal proceedings conducted in a language they fluently understand.

Conclusions

The European Union needs an agreed system of extradition. This system, while being expedient, must not sacrifice liberty and justice for European Citizens for that expediency. The current system does just that. Through a combination of rushed and unclear legislation, the European Arrest Warrant has created the potential for miscarriages of justice to take place in the European Union. One miscarriage of justice is too many. These further points may be considered as both a conclusion to this submission and also as possible points for improvement. If it is felt that these points have not been expanded upon enough then this can be done in further communications.

The adoption of all seven optional clauses contained within Article 4 2002/584/JHA[21].

The Council Framework Decision that created the European Arrest Warrant contains seven optional clauses that strengthen the rights of European Union Member States and suspected fugitives to fight extradition without slowing down the process of a European Arrest Warrant. These optional seven clauses simply increase the number of automatic reasons for refusal of a European Arrest Warrant. They increase the fairness by which the extradition process will be conducted and allow the European Union Member State slightly more jurisdiction over the extradition of suspected fugitives.

It makes little to no legislative sense to include optional clauses within supranational legislation because it encourages a differing approach amongst those who adopt the legislation. If a system is designed to increase European integration in criminal and judicial matters it would be a fair simpler system is all Member States were expected to agree to the same legislation, not tailor it to their own individual needs.

The redevelopment of mutual recognition into mutual understanding.

Mutual recognition by its very nature does not allow for the discussion of conduct but the outright acceptance of it. While mutual recognition may be necessary in supranational economic legislation, it does not work in supranational legislation dealing with justice. Each European Union Member State has a different judicial system, unless the European Union was to instigate a European-wide justice system, each judicial system will remain different but is forced to accept each other as the same under mutual recognition. This does now allow for the clear differences to be discussed, just ignored.

If a system of mutual understanding was implemented instead, this would allow for meaningful discussions between European Union Member States. A system of mutual understanding would suit the process of a European Arrest Warrant far better. This process would allow for reasoned debate before European Arrest Warrants were acted upon. Simply accepting all European judicial systems as being the same and acting in the same manner leads to miscarriages of justice and mistakes being made within judicial processes.

[21] Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States.

The re-introduction of limited prima fascia evidence examination by a non-political judicial extradition tribunal.

Extradition must not become re-politicised. This being evident, there still should be some discussion of prima fascia evidence before any extradition takes place. The formation of a judicial extradition tribunal, whose sole responsibility would be to maintain United Kingdom extradition treaties and ensure that any individual extradited was done so for the correct reasons and with the correct style and amount of evidence that would be needed for a prosecution in the United Kingdom.

While this process may slightly lengthen the extradition proceedings, as the tribunal would only be responsible for extradition, any delay would be entirely minimal. The tribunal should have the powers to refuse extradition if they believe there to be not enough or no prima fascia evidence or if the extradition request breached he legislation it was requested under.

The re-introduction of limited prima fascia evidence examination would ensure that the United Kingdom does not extradite any individual, be them a British citizen or not, for an unjust or unacceptable reason.

The introduction of European Union wide bail and legal aid provisions in all European Union Member States.

The European Union does have provisions for European-wide legal aid but these are not being correctly enforced by European Union Member States. This legislation must be enforced and the United Kingdom should be a vocal critic of those European Union Member States who still refuse to enforce it.

The European Union must introduce a system of European-wide bail. It is entirely unjust and unfair that individuals who are not nationals of the European Union Member State are being held in custody without bail on criminal charges where nationals would have been released on bail. The most simplistic way of correcting this problem would be for the European Council to adopt the proposals put forward by the Commission of the European Communities on criminals procedural rights.

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Appendix One

Andrew Symeou (AS) Timeline

20th July 2010: Jonathan Hiles (British citizen) was assaulted and fell from an unguarded platform in the 'Rescue' nightclub in Zante, Greece. As a result of the fall, Jonathan Hiles sustained serious head injuries.

22nd July 2010: Jonathan Hiles dies as a result of his injuries.

25th July 2007: AS returns to the UK, unaware of Jonathan Hiles death.

18th June 2008: A European Arrest Warrant (EAW) is issued seeking the extradition of AS to face a trial in Greece in relation to the death of Jonathan Hiles.

26th June 2008: AS is arrested by the Metropolitian Police Extradition Unit at his family home.

27th June 2008: AS appears at Westminster Magistrates Court and is remanded on bail to face an extradition hearing on the 7th July 2008.

7th July 2008: AS attends Westminster Magistrates Court where the extradition hearing was then adjourned until August 12th 2008.

12th August 2008: Westminster Magistrates Court arranges for a full extradition hearing to be held on September 30th 2008. AS is released on conditional bail.

30th September 2008: Westminster Magistrates Court rules in favour if AS' extradition to Greece. The case was then adjourned until 30th October 2008.

30th October 2008: Wesminster Magistrates District Judge rules that AS will be sent to Greece to stand trial.

12th March 2009: AS begins a High Court challenge against the decision to have him extradited to Greece.

1st May 2009: The High Court rules that AS must be extradited to Greece and therefore has no more rights of appeal.

23rd July 2009: AS surrenders at Belgravia Police Station and is escorted to Heathrow Airport from where he is then extradited to Greece.

27th July 2009: AS has his bail request refused by the investigating Magistrate in Zante, Greece. AS files an appeal against that decision that will not be decided on until 14th September 2009.

14th September 2009: The Judicial Council in Zante, Greece continues to deny bail. Another request for fail is subsequently denied after a statutory pre-trial review. AS' trial is scheduled for June 4th 2010.

4th June 2010: AS' trial is adjourned and he is granted bail but must remain in Greece.

As of 20th September no new trial date has yet been set.

Appendix Two

Hansard Record: House of Commons Debate – 28th October 2010, 6:00pm

European Arrest Warrants and Extradition

Sam Gyimah [6:01pm] (East Surrey, Conservative):

Thank you, Mr Deputy Speaker, for the opportunity to address this issue and for allowing my hon. Friend Nick de Bois to speak too. This issue has affected several of my constituents, often referred to as the Crete five, as well as my hon. Friend's constituent, Andrew Symeou, who is a notorious example of the frailties of the legislation. The subjugation of an individual to the will of the state-any state-is an important issue and one on which the new Government are right to focus attention.

I commend the Government for appreciating that all is not right with our extradition treaties at present and that a review is a sensible step to address some of the concerns felt by many people. Without doubt, there are discrepancies between the justice systems of the many countries involved in extradition treaties. For example, a number of the offences for which a European arrest warrant can be issued are not crimes in this country. Indeed, many have fought hard so that racism and xenophobia do not become crimes in Britain. There are also clear differences between nations regarding prisoner rights and prison conditions, and these were at the forefront of the minds of the Crete five when they faced extradition proceedings earlier this year. Not only were they concerned by the initial summons they received, which was unclear as to its force and required them to appear in a Greek court just two weeks later, but they also feared a repeat of the case of Mr Symeou, who spent 10 months in a Greek jail without trial.

Those concerns remain very real for anyone facing the threat of extradition to a foreign country. Irrespective of innocence or guilt, the nature of the alleged crime or indeed nationality, certain standards must be maintained regarding the treatment of prisoners. That is as much a part of our justice system as the final verdict handed down, and we should expect our treaty partners to adhere to those same values.

At present, not enough safeguards exist to ensure that people are not sent to foreign prisons under foreign laws without good reason. The experience of many is that extradition is a fine thing only to someone who is running the criminal justice system. Individuals risk their whole life collapsing while they are hauled away without evidence and without hope of a trial any time soon.

We must be careful that the long held, much cherished value of "innocent until proven guilty" is not swept under the carpet as simply the price we have to pay for international co-operation. I hope we do not move towards the French system, about which some have commented that people are seen as guilty from the moment the judicial system is interested in them. Judiciaries of any nation should have to provide some sort of prima facie evidence before extradition takes place. It cannot be right that an unfounded allegation based on evidence that would never stand up in a British court can lead to an extradition once a couple of boxes have been ticked.

There should be some element of proportionality in the system. I would venture that spending vast sums of money to extradite someone accused of stealing a piglet, as has happened recently, may somewhat diminish the power of the warrant when it is issued for more serious offences. The Government should seek assurances about the provision of legal aid and representation for extradited citizens. We must never send people overseas without any idea of whether bail will be granted or whether they will spend the next year of their life in prison with no trial date and no chance to clear their name. As we have seen in the case of Gary McKinnon, Britain should not be signing treaties that will allow other signatories to refuse to extradite when we are sacrificing that right. It is not in the interests of British citizens, and it leads to unbalanced treaty agreements.

There are many reasons for a review. It is long overdue, so I applaud the Government for acting so quickly on the matter. However, if I may, I would like to offer a word of caution. The European arrest warrant was introduced into British law in 2003. The then Prime Minister, Tony Blair, dismissed concerns raised by the Opposition, saying that

"There is one problem with the proposal for a large part of the Conservative party; it has got the word "Europe" in it."- [Hansard, 12 December 2001; Vol. 376, c. 836.]

Although I recognise the politics he was playing, I would not agree with the substance of what he said. This is not an issue primarily about Euroscepticism. It is not a rant against all things European. It is to do with the British values that we hold and our determination to protect those values and our citizens wherever they are in the world.

I urge those conducting the review not to be browbeaten into believing that the valid concerns that were raised in 2003, and which will undoubtedly be raised again, are in fact nothing but the rantings of anti-Europeans. In fact, we have seen, with every day of this coalition Government, that co-operation between different tribes is a good thing. It gets things done, and can turn a desperate situation into a more promising outcome. So there are good reasons for having extradition treaties, and there were many good reasons when the Extradition Act 2003 was first passed. It is now quicker and easier to bring people to justice for the crimes they commit. They cannot just flee across the channel, and they cannot drop in and out of countries with scant regard for the law, and in the globalised world we inhabit, it is a tool we can use to combat one of the biggest challenges facing us- that of a terrorist threat which knows no borders and no nationalities.

At the time of the 2003 Act, however, concerns about how these laws would operate were raised from across the political spectrum. We ploughed on unbowed. Perhaps that was understandable. The events of 9/11 tipped the balance in favour of the EAW. The catastrophic nature of those events no doubt shaped much of our security policy in the

following years, and the belief prevailed that "needs must" and that although the objections had some merit, they did not outweigh the need for immediate, decisive action. Now that those events, although still a constant reminder of the danger we face, are less pressing and less immediate, perhaps we can have a period of considered reflection under this review, so that we can begin to answer some of the questions that were batted away when the law was first introduced.

That is why a review is long overdue. Our allies have made the EAW work for them-for example, Germany has the sort of proportionality test I have mentioned-and I hope that the review does the same for Britain. Yes, if British nationals break the law, they must face justice, as should those from other countries who transgress here. However, every time we read about one of these cases I have mentioned, every time someone is mistreated in a foreign prison off the back of a loosely issued EAW, and every time a year of a young person's life is lost because of something that someone somewhere claims to have seen happen, we lose faith in this process as a proper tool of justice, and we retreat to an unhelpful position of instinctive distrust in international co-operation.

Nick de Bois [6:08pm] (Enfield North, Conservative):

I congratulate my hon. Friend Mr Gyimah on securing this important Adjournment debate. In the time permitted, I cannot review all the aspects of this matter, but I must focus on the key points as pertaining to my constituent, Andrew Symeou. Enfield has a unique and specific interest in the European arrest warrant and extradition, given that two of the current most high-profile cases exposing the system's failings involve Enfield residents-Andrew Symeou and, of course, Gary McKinnon. I and my constituency neighbour, my hon. Friend Mr Burrowes, hope and expect that the review of Gary McKinnon's case will mean that he is not the last victim of an imbalanced process, but the recipient of a new, just and proportionate approach. Perhaps the Minister can update us on that review.

My central premise today, however, is that for the last decade the European Union has been driven by procedural safeguards and processes, not defendants' rights, as moves to enhance speed and efficiency do so at the price, in this case-I believe-of a potential miscarriage of justice. Those who support the European arrest warrant do so because they believe that more criminals get caught. That is a noble goal, and one that I and, I am sure, all Members of the House fully support, but the performance of the warrant is flawed.

Sadly, those who criticise the operation of the European arrest warrant are often cast as apologists for wild European extremists, or organised crime and terrorism. That, of course, is arrant nonsense. For me, it is a question of balance. I do not believe that a

system that produces potential miscarriages of justice at one level should be tolerated in the interests of speed at another. The application of the warrant without proper procedural guarantees has in some cases led to the denial of justice. One of those cases concerns my constituent Andrew Symeou. Andrew was in prison in Greece for 10 months awaiting trial on a charge of manslaughter. Until his final release on bail, the charge was one of manslaughter, although as testified by our High Court, there is sufficient evidence of what I can perhaps describe as the over-enthusiastic interrogation of witnesses. Indeed, there even appears to have been a case of mistaken identity. In Andrew's case and others, surely the European arrest warrant has been misused.

Let me summarise Andrew's experiences. In doing so, I hope in parallel to illustrate how the European arrest warrant has failed, and perhaps thereby help the review by Lord Scott Baker. In short, there has been a failure to scrutinise the case by British courts for prima facie evidence; a lack of bail or euro-bail; a failure of mutual recognition; and, we must never forget, delayed justice for the family of the victim of that tragic incident, which led to the death of Jonathan Hiles-a delayed process that, three years on, leaves us with no one having come to trial yet. As much as anything else, that is not good for the family of the victim.

I cannot address all those issues, but let me turn to the point highlighted earlier, about submitting prima facie evidence prior to extradition. In British law, the Crown Prosecution Service makes the decision to charge individuals with criminal offences in complex cases. The decisions must be made fairly, independently and objectively. It is the duty of the CPS prosecutors to ensure that the right person is charged for the right offence. The key point is that when making a decision, the CPS will always decide whether there is enough evidence against the defendant. Therefore, the quality and reliability of that evidence will also be investigated, and cases progress only if there is considered to be a realistic prospect of conviction.

However, the EAW is based on one of 32 listed crimes in respect of which there is no need for a dual criminality test or any obligation to ensure that prima facie evidence is provided by the member state requesting extradition. Essentially, it requires us to go through a tick-box exercise. All that is required is that the judicial authority in the member state requesting extradition should detail the criminal offence believed to have been committed-that is, ticking the box-and indicate the length of sentence to be expected. In Andrew's case, he contested the request for extradition between 27 June 2008 and May 2009, but the court was able to examine only the process, and at no stage the facts of the case.

How powerless has British justice become when the High Court dismisses the appeal by the Symeou family even though in some instances it agrees that the evidence submitted shows that the local police investigation was flawed and when it could not rule out the possibility that the police were guilty of the manipulation and fabrication of evidence? How futile is our justice when it is decided that a young British man's future is not under our control, but is instead an argument to be had in Greek courts? Leave was granted to appeal to the House of Lords, but the House of Lords in turn rejected it.

The second point that I would like to consider in the time available is the issue of bail. When the European arrest warrant was agreed in 2002, it was with the understanding from all sides that this measure, which would have the effect of causing EU citizens standing trial to be held in prison in another member state, would be swiftly followed by measures guaranteeing their fair trial rights, as well as guaranteeing that there would be no miscarriages of justice. That promise was betrayed by member states when they failed to agree in 2004 to a proposal for a framework decision on procedural rights. All we can hope for now is, at best, a piecemeal approach.

The European Council is promising only to consider, not to legislate on, a so-called euro-bail, which would have helped my constituent who had been explicitly refused bail because he was a foreigner. Several years ago, Lord Lamont predicted with characteristic foresight the plight of my constituent when he said:

> "In some countries, bail is frequently refused to foreigners for fear they will abscond. In fact, there are several hundred British citizens on remand in Europe's prisons many of whom would have been released on bail if they were nationals of the country holding them."

Is it any wonder that my constituent and his family feel the UK Government have repeatedly let them down? Andrew was forced to languish in jail on remand for 10 months until June this year, yet with the existing EAW, one member state could all too easily have returned him, if he had been able to serve bail over here-under the European arrest warrant.

The emotional and financial cost to the family, who have remained supportive throughout, has been extraordinary. They have had to decamp to Greece to be with their son when he was first extradited 16 months ago. Their ability to continue to run their business and provide an income has been seriously compromised, but despite that, the family members have remained united and passionate in their campaign for justice for their son. They want him to have his day in court. I pay tribute to their courage and resilience in the face of this huge adversity.

To conclude, we should have an agreed framework of extradition for member states within the European Union-I accept that. The process needs to be fast, but should not be carried out without respect for an individual's right to a fair trial and a fair judicial process. At the heart of these flaws is the expected notion of mutual recognition between the judicial process in member states. The process of mutual recognition allows for miscarriages, as we have discussed. I suggest that a system of mutual understanding would suit the process of a European arrest warrant far better. Such a process would allow for reasoned debate before EAWs were acted on rather than allow European law simply to supersede our law. This would allow European warrants to be declined if the acts were viewed as non-criminal in the UK or the evidence was insufficient.

It seems perverse that hon. Members on both sides of the House were up in arms over the 42-day detention provisions of the last Parliament, yet we are willing to have our own citizens held in foreign prisons for far longer as a result of a flawed piece of legislation. Should we as a House accept that liberty and justice be sacrificed for expediency?

James Brokenshire [6:18pm] (Parliamentary Under Secretary of State, Home Office; Old Bexley and Sidcup, Conservative):

I congratulate my hon. Friend Mr Gyimah on securing this debate and on the measured way in which he delivered his comments this evening. I would also like to thank my hon. Friend Nick de Bois for highlighting a number of issues about the European arrest warrant and for posing a number of questions about the operation of the system. In the time available, I shall try to address as many of the points highlighted by my hon. Friends as I can.

The European arrest warrant is an important mechanism in the administration of justice in the European Union, where citizens can move across its borders with relative freedom for the purposes of business or leisure. Of course, no one sought for trial in the EU should be able to evade justice by crossing a border, which is why the warrant is important, but to be really effective it must command the confidence of those whom it affects, striking a fair balance between the rights of those sought and the rights of their alleged victims. For that reason, I welcome the opportunity this debate affords to explore some of the pertinent issues.

My hon. Friends have raised a number of points, and I would like to add some of my own. My hon. Friend the Member for East Surrey is aware that there is no ministerial involvement in European arrest warrant proceedings. A European arrest warrant can be issued only by a recognised judicial authority, and the decision about whether to order surrender is a matter for the courts in the country receiving the warrant. Having said that,

I appreciate the concerns that my hon. Friend has expressed about the welfare of his constituent and his constituent's co-accused, who were surrendered on a European arrest warrant earlier this year to Crete to face serious criminal charges. I am aware of the circumstances of the case, in which another young man, Mr Robert Hughes-also a British citizen-was assaulted and very seriously injured.

The House will appreciate that I cannot comment on, and still less seek to intervene in, the judicial processes of another state. But I can say that the accused were surrendered to Crete in early August after their appeal rights under part 1 of the Extradition Act 2003, which gives effect to the European arrest warrant in the United Kingdom, were exhausted. Once there, they were granted bail on payment of a surety, and as far as the Foreign and Commonwealth Office is aware, they have been permitted to return to the United Kingdom pending the setting of a trial date.

My hon. Friend the Member for Enfield North mentioned the case of his constituent, Andrew Symeou. Mr Symeou was surrendered to Greece on a European arrest warrant last year, where he is accused of the manslaughter in 2007 of Mr Jonathan Hiles, also a British citizen. I can certainly confirm the advice received from the Foreign and Commonwealth Office that Mr Symeou is now on bail in Greece and awaiting trial in March next year. The trial was postponed from June this year because summonses for British witnesses were regrettably not able to be served on time. This is self-evidently distressing for all those involved in this tragic case, but I trust that the delay will not result in a denial of justice to any of the parties. I can assure the House that the unit in the Home Office that processes summonses from overseas has flagged its system with the names of these witnesses. That means that when the summonses containing the necessary information are re-sent by the Greek authorities, they will be identified promptly and served on the witnesses.

It would not appropriate for me to comment further on individual cases, but in general terms Members will be aware that the Extradition Act 2003, and the various treaties and instruments to which it gives effect, contain a range of safeguards for the person whose extradition is sought. These safeguards are in place to strike a balance between the rights of the requested person and the rights of their alleged victim or victims, as I said earlier. It is important that suspects are quickly brought to justice, and that is no less the case when the offence has cross-border elements.

My hon. Friend the Member for Enfield North mentioned that a European arrest warrant may be issued when a fugitive is merely required for investigation. I can reassure him on that point. The instrument states categorically:

"The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order."

I hope that that provides a measure of clarification. He also made the general point that, in cross-border cases, bail is often denied to defendants who are not residents of the country in which they are charged. He might be aware that another EU criminal justice measure, the European supervision order, was adopted last year. It is not yet in force, but it will provide for a more flexible system of bail in cross-border cases. In any event, decisions on bail, whether here in the United Kingdom or abroad, are a matter for the trial court, which will be mindful of the importance of ensuring the attendance of defendants.

The coalition Government are aware of the public interest in the United Kingdom's extradition arrangements, and I have noted with care the comments that my hon. Friends have made in this regard. That is why my right hon. Friend the Home Secretary announced a judge-led review of our extradition arrangements to Parliament on 8 September. On 14 October, the coalition Government announced that the independent review would be led by Sir Scott Baker, a former Lord Justice of Appeal. He will be supported by two lawyers with wide experience and in-depth knowledge of extradition law. The operation of the European arrest warrant will be looked at as part of the review to ensure that it operates as effectively as possible and in the interests of justice. In her statement to the House, the Home Secretary announced that the five issues that would be covered by the review were the

"breadth of Secretary of State discretion in an extradition case; the operation of the European arrest warrant, including the way in which those of its safeguards which are optional have been transposed into UK law; whether the forum bar to extradition should be commenced; whether the US-UK extradition treaty is unbalanced; whether requesting states should be required to provide prima facie evidence."-[Hansard, 8 September 2010; Vol. 515, c. 18WS.]

The issue of prima facie evidence is one of those that are under review as part of the investigation. It is a long time-nearly 20 years-since prima facie evidence has been required to support an extradition request between European countries. The European convention on extradition, which preceded the European arrest warrant in the EU, abolished the requirement for prima facie evidence. The United Kingdom implemented the convention in 1991, when the Extradition Act 1989 came into force. Nick de Bois asked about the case of Gary McKinnon. The Home Secretary obtained an adjournment of the High Court hearing so that she could consider the issues for herself, along with further

representations from Mr McKinnon. She can legally stop extradition at this stage in the proceedings only if she concludes that Mr McKinnon's human rights would be breached if he were extradited. She is actively considering those issues with a view to reaching a decision as soon as possible.

Sam Gyimah (East Surrey, Conservative):

The Minister has mentioned the Home Secretary's involvement in the Gary McKinnon case. Would it not be helpful to ensuring justice if she became more directly involved in other extradition cases? At present, political involvement is completely absent from extradition.

James Brokenshire (Parliamentary Under Secretary of State, Home Office; Old Bexley and Sidcup, Conservative) :

As I have said, the extradition review will consider a range of issues relating to extradition arrangements. Obviously I do not want to prejudge the outcome of the review, but I am sure that the hon. Gentleman's point will have been heard very clearly.

A number of concerns have been expressed about the European arrest warrant, but, as Members have pointed out this evening, it has been an invaluable tool in the fight against international crime within the EU. The European arrest warrant system has simplified and speeded up the extradition of persons both to and from the United Kingdom, and has made possible some procedures that were not formerly possible. Before the warrant was introduced, some EU member states had a constitutional bar on the extradition of their own nationals. The warrant has removed that barrier to extradition, and has updated or streamlined the extradition process in a number of other ways.

An increasing number of European arrest warrants are being dealt with in the United Kingdom. They are issued for a range of different offences. For an offence to be extraditable, it must be punishable by the law of the issuing member state with a custodial sentence for a maximum period of at least 12 months, or, when sentence has been passed, with a sentence of at least four months. Offences that fall into one of the categories on the list contained in the European arrest warrant framework decision-all serious offence types-and that are punishable with a maximum sentence of at least three years in the issuing state may not be subject to the dual criminality test in the executing state. However, for the purposes of all other offences, the United Kingdom has implemented an optional further safeguard, and requires that the offence must also be an offence in the United Kingdom. The EU is actively exploring the best means of addressing

the issue of proportionality in the number of warrants issued, and the United Kingdom is playing a leading role in its discussions.

When it comes to justice and home affairs in the EU, the picture is constantly evolving. The Government have decided to opt into the EU directive on the right to information in criminal proceedings. Opting in will help to protect the civil liberties of our citizens abroad without compromising the integrity of the United Kingdom justice system.

My hon. Friend the Member for East Surrey mentioned legal aid. Legal assistance is an issue that is included in the Stockholm programme and the Commission is introducing a proposal on legal assistance for consideration next year.

I am pleased to have had the opportunity to debate the United Kingdom's extradition arrangements with member states of the European Union. Clearly, the issue is being examined carefully as part of the review that I have highlighted. That is why the review has been set up. It will report next summer, after thorough consultation-

House adjourned without Question put (Standing Order No. 9(7)).