



Written by [Joe Wolverton, II, J.D.](#) on April 12, 2012

European Human Rights Court Agrees to Extradite Five Terror Suspects to U.S.

On Tuesday, the [European Court of Human Rights](#) issued a ruling permitting the United Kingdom to extradite to the United States six men suspected by the U.S. of committing acts of terrorism.

The principal issue in the case and the one that attracted the attention of civil rights groups around the world is whether reports of harsh conditions and physical deprivation of suspected terrorists at prisons in the United States would influence the court's ruling. Apparently, it did not.



Specifically, the Court informed the government of the United Kingdom that there would be “no violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights as a result of conditions of detention at ADX Florence (a “supermax” prison in the United States)....” (ADX Florence pictured at left.)

The case at bar involved six alleged terrorists: Babar Ahmad, Haroon Rashid Aswat, Syed Tahla Ahsan, Mustafa Kamal Mustafa (known more commonly as Abu Hamza), Adel Abdul Bary and Khaled Al-Fawwaz, all of whom were being detained in the U.K. pending the European court's ruling.

Between 1999 and 2006 each of the six men was indicted on various terrorism charges in the United States. Ahmad and Ahsan are accused of several criminal acts, including providing material support to terrorists and “conspiracy to kill, kidnap, maim or injure” people or property in a foreign country.

Abu Hamza is charged with 11 different crimes related to the taking of 16 hostages in Yemen in 1998, advocating violent jihad in Afghanistan in 2001, and conspiring to establish a jihad training camp in Bly, Oregon between June 2000 and December 2001.

Aswat was indicted as Abu Hamza's co-conspirator in the attempt to set up a terrorist training camp in Orgeon. Citing concerns of a diagnosis of schizophrenia and the conditions of the hospital where he is being held, the Court delayed its ruling on Hamza's petition.

Bary and Al-Fawwaz were indicted for their alleged involvement in the bombing of the American embassies in Nairobi and Dar es Salaam in 1998.

Al-Fawwaz faces more than 269 counts of murder.

Based on the preceding list of indictments, the government of the United States petitioned the United Kingdom for the extradition of the six men. After receiving the request, the government of the United Kingdom arrested the men and detained them in the U.K. until a decision could be made on the petition



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for extradition.

Upon their incarceration, the six men fought extradition to the United States (separately) in cases brought before English courts. Each of the cases was unsuccessful and further appeal was denied by the House of Lords.

Finding no joy in the British court system, between 2007 and 2009, the six individually filed official applications with the European Court of Human Rights.

Given the substantial similarity of the issues raised in each of the six petitions, the Court decided to join the six cases and rule on them together.

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

Regarding the admissibility of the complaints filed by the first four applicants, the European Court held in a decision handed down in 2010 that the United States had provided sufficient assurances that the men would face “no real risk” that they would be branded as enemy combatants or be subject to extraordinary rendition (the result of either could be torture and indefinite detention).

Further, the Court announced that it was satisfied that the men would be tried fairly during their trials in the U.S. federal courts, essentially ruling that the men would receive judicial due process during their American trials.

In fairness to the applicants, that nearly two-year-old decision may need to be amended in light of the fact that since [enactment of the National Defense Authorization Act](#) last December, even citizens of the United States merely suspected of supporting terrorism may be denied due process and basic constitutional civil rights (including habeas corpus) and may be indefinitely detained without charge or recourse to legal counsel. It would seem that the six men soon to be extradited have much to fear, judicial reassurances notwithstanding.

Further, there may be more to be feared by the six men soon to be transferred to an American maximum security prison as the government of the United States has [elsewhere declared](#) that terror suspects are to be tried by military tribunals, rather than in federal courts.

After issuing the admissibility ruling, the Court sent a request for additional information to the parties involved, primarily directed at the government of the United States. After approving several requests by the United States for a continuation of the matter and for extensions of the time granted for submission of answers to the questions put to it by the Court, all discovery was eventually concluded in October 2011.

The seemingly interminable delays allowed by the Court, as well as the related legal machinations that lasted years, were criticized by the government of the U.K. The matter has dragged on, in fact, as one of the suspects has been detained in a British cell for eight years without ever being apprised of the charges laid against him.

The other part of the petition filed by the six men concerned the conditions at the so-called “Supermax”



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prison at which they are to be detained and the length of the prison terms to which they could be sentenced.

The ADX Florence facility is located about 100 miles south of Denver, Colorado, and is one of the prisons designated by the federal government for the detention of terror suspects.

There is some fear of placing so many accused terrorists in such close quarters with each other in the bizarre majority-Muslim population of these ultra-maximum security prisons. According to [a letter cited by the New York Times](#), an American charged with helping friends attend an extremist training camp in Pakistan, Ismael Royer (a 38-year-old Missourian born Randall Royer) virtually rubs shoulders twice a week at exercise sessions with some of the most high-profile convicted terrorists in the history of the United States. And his cell, each of their cells, is in Colorado, not Cuba.

The *Times* article makes a point that should at once be obvious to readers regarding the esprit de corps that might be engendered among such unusual inmates:

Since 2006, the Bureau of Prisons has moved many of those convicted in terrorism cases to two special units that severely restrict visits and phone calls. But in creating what are Muslim-dominated units, prison officials have inadvertently fostered a sense of solidarity and defiance.

Regarding the issues of sentence length and prison conditions, Judge Lech Garlicki of Poland, President of the European Court of Human Rights, wrote on behalf of a unanimous bench:

Having fully considered all the evidence from both parties, including specifically prepared statements by officials at ADX Florence as well as letters provided by the US Department of Justice, the Court held that conditions at ADX would not amount to ill-treatment.

And:

Mr Bary faces 269 mandatory sentences of life imprisonment without the possibility of parole. Mr Ahmad, Mr Ahsan, Abu Hamza and Mr Al Fawwaz face discretionary life sentences.

Having regard to the seriousness of the offences in question, the Court did not consider that these sentences were grossly disproportionate or amounted to inhuman or degrading treatment. There would therefore be no violation of Article 3 in the case of any of these five applicants if they were extradited, convicted and given life sentences.

Naturally, the United States is pleased with the decision as is indicated by a statement made on the [website of the U.S. Embassy in London](#): “We look forward to the court’s decision becoming final and to the extradition of these defendants to stand trial in the United States,” the statement from the Department of Justice said.



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