

ISSUE BRIEF

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European Court Errs in Decision on Terrorist Suspect Extradition

Ted R. Bromund, PhD, and Andrew Robert James Southam

The European Court of Human Rights (ECHR) has given an interim ruling that Britain cannot extradite Haroon Aswat to the United States. Aswat has been indicted in the U.S. on conspiracy charges related to the establishment of a terrorist training camp for radical Islamists in Bly, Oregon, in 1999.

By this decision, the ECHR, unless its decision is overturned, will have done significant damage to the Anglo-American extradition system and to the ability of both sovereign nations to try and punish serious offenses, including terrorism.

The Origins of the Aswat Case. The Aswat extradition case was originally conducted simultaneously with that of five other accused terrorists—Abu Hamza, Babar Ahmad, Syed Talha Ahsan, Adel Abdul Bary, and Khaled al-Fawwaz—who were all extradited to the U.S. in October 2012. In Aswat’s case, British courts had agreed to his extradition, and the House of Lords refused his final appeal in 2007.

All six sought to avoid extradition by lodging an appeal with the ECHR in June 2007. In April 2012, almost five years later, the ECHR finally decided that all of them—apart from Aswat—could be extradited. The ECHR separated its consideration of Aswat on the grounds that, since he filed his appeal, he had

been diagnosed with a mental disorder and had been transferred in Britain from its Long Lartin prison to the Broadmoor High Security Psychiatric Hospital.

When the ECHR ruled on the case of Ahmad (who, like Aswat, is a British citizen), on April 10, 2012, it found that the conditions at ADX Florence (a U.S. supermax prison in Colorado) did not violate Article 3 of the European Convention on Human Rights, which provides that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The ECHR noted that complaints related to the U.S. treatment of mental health issues were “manifestly ill-founded” and that the U.S. has an extensive system of procedural and legal protections for prisoners. Similarly, the ECHR expressed no concern about the future treatment of Talha Ahsan, who was allegedly suffering from Asperger’s syndrome.

The Basis of the ECHR’s Ruling. Yet when the ECHR came to rule on the Aswat case, it found that “solely on account of the current severity of [Aswat’s] mental condition,” extraditing him “would be a violation of Article 3 of the Convention.” This decision rests on three closely related findings:

1. Aswat is genuinely and severely mentally ill, and his current treatment in Broadmoor is “essential for his personal safety and treatment”;
2. He could remain in pre-trial detention for a long period in the U.S. without information being available about detention conditions; and
3. If convicted and serving out his sentence in a U.S. supermax prison (ADX Florence, in particular), his mental condition would likely be exacerbated.

This paper, in its entirety, can be found at
<http://report.heritage.org/ib3930>

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The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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All three of these findings raise troubling questions for future cases.

ECHR Ruling Wrongly Trumps British Judicial Process. Even if Aswat is genuinely and severely mentally ill, it is important to recognize that mental illness is not an absolute barrier to extradition for all time. At the very least, this is a test to be decided by a national court based on its own established legal standards, not those of a supra-national body.

ECHR Assessment of U.S. System Is Unfair. On the ECHR's second point, about pre-hearing detention, it alleged that Aswat might be held in ADX Florence, if only for a short time, and that the U.S. had offered no guarantees on where Aswat would be held or how long he might be held in ADX Florence. But no trusted and democratic nation, whether a European one or the U.S., can determine precisely when its courts will hear a case: These are matters of administrative process. Similarly, it is not possible for any such nation to guarantee where accused persons will be held pending trial. These are decisions for governments based on the circumstances of the time.

Nor is there any reason to believe that appropriate medical attention will not be given to individuals in the U.S. at whatever prison they are held. The American judicial system has as much experience treating prisoners with mental health conditions as its European counterparts, and the ECHR had previously accepted the existence of an extensive U.S. system of procedural and legal protections, as well as medical and psychiatric services.

ECHR Ruling Is Contradictory and Speculative. On the third matter about conviction and sentencing, it is not improbable that a person convicted of terrorist offenses will be sent to a high-level security prison. But again, this does not mean that there will be not be appropriate treatment of

a prisoner with a medical condition. Moreover, the ECHR's ruling contradicts its own previous findings by characterizing ADX Florence as enforcing "long periods of social isolation" after finding in the Ahmad case that isolation was "partial and relative."

It also relies heavily on speculative assertions about what might happen to Ahmad. These assertions infringe on the right of the U.S. to operate its own system for deciding where to hold prisoners, a system that the ECHR itself described as "accessible and rational." It concluded that, because Aswat faces "an uncertain future in an as yet undetermined institution," the protections and services that the U.S. provides *might* be inadequate. This assertion is groundless and offensive.

ECHR Ruling Establishes Dangerous Precedents. By deciding for Aswat, the ECHR has refused to accept the repeated conclusion of British courts that Aswat can be extradited. It has incentivized future suspects to play the mental illness card. It has rejected its own previous conclusions about the nature and protections of the U.S. judicial and prison systems and ruled on the basis of its hypothetical speculations that these protections might be inadequate. It has asserted that, if an individual subject to extradition lacks "the support of family and friends" in, and ties to, the country that seeks extradition, the barrier to extradition is even higher, a conclusion that could be advanced against many extradition cases.

U.S. Should Support Britain's Defense of Its Sovereignty. In short, the ECHR's decision in the Aswat case is a serious assault on the sovereignty of both Britain and the United States. It relies on spurious accusations against the U.S. legal and judicial system, an assault that opens the way for further challenges to the modern and effective Anglo-American extradition system. It also offers

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1. Office of the United States Trade Representative, "Mission of the USTR," <http://www.ustr.gov/about-us/mission> (accessed May 3, 2013).
 2. Dan Ikenson, "Obama's Trade Policy Should Be Judged on Its Accomplishments, Not Its Promise," *Forbes*, March 12, 2013, <http://www.forbes.com/sites/danikenson/2013/03/12/obamas-trade-policy-should-be-judged-on-its-accomplishments-not-its-promise/> (accessed May 3, 2013).
 3. J. F. Hornbeck and William H. Cooper, "Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy," Congressional Research Service Report for Congress, August 9, 2012, Appendix A, <http://www.fas.org/sgp/crs/misc/RL33743.pdf> (accessed May 3, 2013).
 4. Current Trade Adjustment Assistance (TAA) is effective until December 31, 2013. For more about TAA impact evaluations, see David B. Muhlhausen, "Trade Adjustment Assistance: Let the Ineffective and Costly Program Expire," Heritage Foundation WebMemo No. 3135, February 4, 2011, <http://www.heritage.org/research/reports/2011/02/trade-adjustment-assistance-let-the-ineffective-and-costly-program-expire>.
 5. Derek Scissors, Charlotte Espinoza, and Ambassador Terry Miller, "Trade Freedom: How Imports Support U.S. Jobs," Heritage Foundation Backgrounder No. 2725, September 11, 2012, <http://www.heritage.org/research/reports/2012/09/trade-freedom-how-imports-support-us-jobs>.

additional and compelling evidence for the conclusion that the ECHR is a political body, not a judicial one, with a steadily increasing tendency to rule against Britain and thus that Britain should withdraw from its jurisdiction. The U.S. should support Britain as it defends its sovereignty from over-reaching European political institutions.

Ted R. Bromund, PhD, is Senior Research Fellow in Anglo-American Relations in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation. Andrew Robert James Southam is a former extradition case officer in the International Criminal Policy Directorate of the U.K. Home Office.