

7 February 2005

Lord Bassam of Brighton,  
House of Lords,  
Government Whips Office,  
London SW1A 1PW

Dear Lord Bassam,

**Extradition Act 2003 (Amendment of Designations) Order 2005**

I read with interest your short speech in moving the above on 4<sup>th</sup> February in the House of Lords. In particular, I note that you stated (col 499):

There have been concerns in various quarters that ... new members states may not have judicial systems that can support the simplified extradition procedure. There is no evidence to support such concerns. All the new member states are signatories to the European Convention on Human Rights, and we have had extradition relations with them under the European Convention on Extradition. In any event, the European Commission has provided for a three-year transitional period in which it can suspend the operation of the framework decision in any of those states.

This sets out the formal legal position. However, the reality of the situation is somewhat different. The European Commission, as you may be aware, has proposed a draft framework decision on certain procedural rights in criminal proceedings across the EU. One of the matters that has caused us considerable concern is that the proposal from the Commission sets a minimum standard for legal aid which is less than in the European Convention - referring, for example, to a right to 'legal advice' not representation. On the one hand, it would appear that the Commission, unlike the UK government, accepts that the Convention by itself is not enough. On the other, it appears that the Commission seeks to ease the consequent financial burden for states in relation to legal aid.

The United Kingdom actually has, relative to other member states, a high level of legal aid in criminal cases of which it should be proud. This would justify it taking a lead role in encouraging other member states to reach similarly high standards. Over the last three years, I have worked with an Open Society Institute project on legal aid in the accession countries and have been particularly involved in the position in Lithuania. Lithuania, which I believe to be in advance of the other Baltic states, has just passed a law on legal aid which would be compliant with the European Convention but where questions must be raised in relation both to the funds available from the Lithuanian government and the quality of the legal assistance provided. Those countries emerging from Soviet domination are experiencing a severe problem in recognising the difficulties on the ground of delivering the level of legal aid which provides a reasonable basis for the kind of assertion in your speech.

I very much hope that, behind the scenes, the UK government is displaying leadership in terms of requiring the accession - and, regrettably, some existing - member states to

upgrade their legal aid systems and other protections for suspects and defendants to a satisfactory level of compliance with the requirements of the Convention. Failure to do this will, at some stage, rebound on the necessary mutual trust between member states on which the programme of mutual recognition is based and may, indeed, rebound on the somewhat over-confident views that, I fear, were expressed in your speech to the Lords.

Yours sincerely

Roger Smith