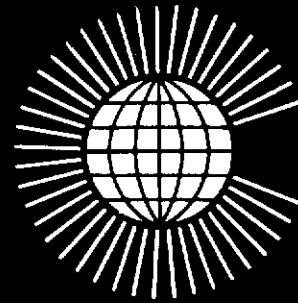


Commonwealth Legal Assistance News



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DRUG TRAFFICKING

Summit of the Americas - Ministerial Conference concerning the laundering of proceeds and instrumentalities of crime (Buenos Aires, Argentina, December 2, 1995)

Ministers representing 34 states participating in the Summit of the Americas (including Commonwealth jurisdictions in the hemisphere), acting in accordance with, *inter alia*, the obligations undertaken by their Governments upon ratification of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, agreed to recommend to their Governments a plan of action for a co-ordinated hemispheric response to combat money laundering. The Ministers stated that investments and the liberalisation and integration of markets should be encouraged as well as the commitment of countries to strengthen the mechanisms for the promotion and protection of the flow of capital and investments in the region.

It was agreed by the Ministers to take all necessary measures, (including legislative and administrative, in conformity with their national constitutional principles, laws and the basic concepts of their legal systems, to combat money laundering on a hemispheric level in full accordance with the definitions set out in the 1988 UN Convention, where this is applicable.

ASSET FORFEITURE

Mexico/United Kingdom: Asset Forfeiture Co-operation Negotiations

Negotiations are taking place between Mexico and the United Kingdom for an asset forfeiture co-operation agreement which aims to enable the forfeiture by the UK on behalf of Mexico and eventual transmission to the Mexican Government of bank deposits held by Raul Salinas, the brother of former Mexican President Carlos Salinas.

There is an agreement in force between the two governments which only allows freezing and confiscation of funds and accounts if they can be shown to be derived from drug trafficking.

Raul Salinas is at present in jail in Mexico on charges of murder and illegal enrichment (allegedly money received illegally when he served with the Mexican Government).

The negotiations for this agreement highlight its importance as a means for governments to strengthen the role of mutual assistance in the investigation of a wide range of international crime.

MUTUAL ASSISTANCE BETWEEN BUSINESS REGULATORY AGENCIES

UK and Italy: MOU for Financial Services Co-operation

A memorandum of Understanding (MOU) on regulatory co-operation has been signed by the UK financial services regulators (SIB) and their Italian counterparts (CONSOB). Its purpose is to strengthen protection offered to investors and to set up a framework for the exchange of information. The exchange of information will facilitate the identification and investigation of unlawful activity in the area of share dealings, fraud, insider dealing and market manipulation.

The United Kingdom has other Memoranda of Understanding with financial regulators in the United States of America, Hong Kong, Sweden, Japan and Switzerland. A treaty on sharing regulatory information is in force between the UK and the Netherlands.

EXTRADITION

Thailand extradites national

In a departure from previous practice the Thai Appeals Court upheld the decision of the Criminal Court which found a former Thai MP liable to surrender to the United States to face drug trafficking charges. This is the first case in which Thai courts have been prepared to surrender a national to face criminal charges in another country.

Constitutional Validity of US Extradition Law

In the last issue of CLAN we reported on the challenge to the constitutional validity of the US extradition law. While we await advice of the outcome of that case the *International Enforcement Law Reporter* advises in its January issue that a US District Court has upheld the validity of the statute in another case. In *Carreno* the judge expressly disagreed with the decision in *Lobue v. Christopher* and held that the requirement that a court certify evidence to the Secretary of State was simply a means of notifying extraditability to enable the executive authority to issue a surrender warrant.

MONEY LAUNDERING

The European Convention on Money Laundering is becoming the major special purpose international instrument on this subject. The 25th signature of the Convention came in December. Already in force between the 8 countries which have ratified, the Convention has been signed by a further 17 countries. Three Commonwealth countries have so far signed the Convention (Britain, Australia and Cyprus) which imposes upon states parties obligations to take action to combat money laundering and to render assistance to other states parties in the investigation and prosecution of money laundering offences.

CASE NOTES

Extradition - limitation periods - review of Magistrate's decision

The appellant was in custody awaiting surrender from the UK. He sought the issue of a writ of habeas corpus on the ground that the request contained no detail on limitation periods in respect of the offence for which he was sought.

Held: Refusing the application, as the issue had not been raised before the Magistrate there had been ground on which a decision not to commit could have been based.

R. v. Bow Street Magistrates Court; Ex parte Paloka, The Times 16 November 1995.

Extradition - Abducted person - South African national - member of ANC - jurisdiction - international law.

The Appellant, a member of the military wing of the African National Congress, was forcibly abducted from Swaziland by unidentified persons and brought to the Republic of South Africa where he was formally arrested.

It was argued on behalf of the Appellant that the abduction violated international law and that this denied the court jurisdiction to try him.

The court in this case examined the rules of Roman-Dutch common law and international law.

It was held :

1. That the prohibition on the exercise of jurisdiction over an abducted person is based on sound legal principles relating to the protection of human rights and respect for territorial sovereignty. The state must come to court in criminal proceedings with clean hands.
2. That a South African court has no jurisdiction to try a person abducted by agents of the state from another state.

The conviction and sentence were set aside.

State v. Ebrahimi : South Africa Supreme Court (Appellate Division) February 16 1991 31 I.L.M. 888 (1992).

(N.B. see also CLAN Issue No 10, December 16, 1995, p. 2, which contains a short note on the removal of fugitives from former "independent homelands" to South Africa).

Admissibility of evidence - Ireland - fresh evidence on habeas corpus application not adduced to magistrates - whether admissible

C was subject to an extradition order to be tried in Ireland for a serious offence. He applied for habeas corpus and for judicial review of the extradition order on the grounds that once extradited he would stand trial for a political offence within the meaning of the Backing of Warrants (Republic of Ireland Act 1965, s.2(2)).

The applications were dismissed and it was held:

1. That on a habeas corpus application, additional or fresh evidence which was not adduced to the magistrates that S.2 applied was inadmissible.
2. That the court was not obliged to hear arguments objecting to extradition which the detainee could have presented to the magistrates although counsel failed to do so.
3. That the Divisional Court had no power to expedite the detainee's removal by ordering

that any application for leave to appeal to the House of Lords should be made on the same day as the judgment, because under the Administration of Justice Act 1960, S2(1), the detainee had the right to apply within the statutory time limit of 14 days.

Conlon (John Francis), Re (CO/3778/94) March 2, 1995, D.C.

Extradition - allegation of forgery committed in Dominica dated May 28 1977 - Fugitive Offenders Act 1967 operative in St. Lucia June 16 1977 - Habeas Corpus

On May 28 1977 the Government of Dominica sought the extradition of the Applicant from St Lucia. During this time, there were in existence certain reciprocal arrangements between both Governments for the return of persons accused of certain crimes. However, the Fugitive Offenders Act 1967 of St. Lucia only came into operation on June 17 1977, (that is, after the date of the request).

The Government acted on the request on June 20 1977 and the Magistrate, acting on the Governor's directive issued his warrant of arrest on June 21 1977. The applicant was arrested and appeared before the Magistrate on June 22 1977. The order of committal was made on July 27. The applicant then applied by motion for the writ of habeas corpus to issue.

It was held:

1. That the request by the Government of Dominica was lawful.
2. That the Magistrate had followed the procedure in accordance with the Act.
3. That the Governor had acted in accordance with the Act after it had come into force.

The application was refused and the committal upheld.

Leonce v. The Attorney General (St Lucia - High Court, Suit No. 387 of 1977, September 1, 7, 1977.)

Extradition - fundamental rights - death penalty - Extradition Treaty between Canada and the United States of America - Extradition Act, RSC 1985 S.25

The Appellant was convicted of murder in the USA and escaped from prison. He was later captured in Canada. The US Authorities then sought to extradite him, to face a probable death penalty.

In 1986, the Minister of Justice decided that the Appellant should be surrendered to the United States without seeking any assurance from the United States Authorities that the death penalty would not be imposed or carried out on his return.

The Supreme Court had to consider whether the decision to extradite the Appellant infringed his right to liberty and to security of the person (under the Canadian Charter of Rights and Freedoms).

The Court held:

That the Appellant had failed to discharge the burden of proving that his rights under the Charter had been violated. S.12 of the Charter (the right not to be subjected to cruel and unusual treatment or punishment) did not apply because the death penalty, if enforced, would be implemented outside of Canada. The failure to extradite in such a case may lead to Canada being seen as a safe haven for American fugitives in the future.

The Appeal was dismissed.

Kindler v Canada (Minister of Justice) Supreme Court, Canada, 21 February, 26 February 1991.

Extradition - Request by US to extradite citizen petitioners for trial on drugs charges - whether extradition of citizen in conflict with fundamental right to remain in jurisdiction - whether legislation permitting extradition of citizen void - Constitution of Pakistan.

The United States sought the extradition of the petitioners to stand trial on charges of importing heroin to that country. In pursuance of the extradition treaty between the two countries, the petitioners submitted written statements but did not produce any evidence to refute any of the charges.

The magistrate sent a report to the federal government holding that the evidence laid before him established a prima facie case for surrendering the petitioners to the United States.

The petitioners appealed to the Supreme Court, arguing that:

1. the Extradition Act 1972 violated their fundamental right to remain in the jurisdiction; and
2. the magistrate failed to follow the correct procedure before preparing his report.

The court held:

1. That it was a national goal that Pakistan play an effective role in international affairs. To allow Pakistan to be a safe haven for those of its citizens who committed serious crimes abroad, would be contrary to such national objective.
2. That the second and third petitions would be refused - (there had been affidavit evidence from the US drug enforcement agencies or customs services who had direct dealings with the petitioners). With regard to the first petitioner, there had been no depositions from the persons who claimed to have had direct dealings with him. Instead, the magistrate accepted evidence - the form of an affidavit from an attorney who had met the persons in question.

Leave to appeal was granted to the first petitioner, but refused to the second and third petitioners.

Nasrullah Khan Henjra v Government of Pakistan and others:

Khalid Khan v Government of Pakistan and others

Akhtar Malik and others v Government of Pakistan and others Supreme Court 13 October 1993 and others.

LEGISLATION

Since Issue 9 of CLAN, October 1995, the Commercial Crime Unit has received additional copies of laws of member countries. The following list represents those additions. Copies are available on request but in most cases will, as soon as possible, be included in the MA Guide to National Laws, the first parts of which have already been distributed.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Country

Name & Date of Act

Australia Various regulations under the Mutual Assistance in Criminal Matters Act 1987 applying the Act to the following countries with which Australia has general bilateral mutual assistance treaties: Argentina, Austria, Canada, Finland, France, Israel, Italy, Republic of Korea, Luxembourg, Mexico, Netherlands, Philippines, Portugal, Spain and Switzerland.

Regulations under the Mutual Assistance in Criminal Matters Act 1987 applying the Act to Hong Kong and the United Kingdom subject to the terms of bilateral treaties relating to the provision of mutual assistance in drug cases.

Regulations under the Mutual Assistance in Criminal Matters Act applying the Act (in whole or in part) to the following Commonwealth countries with which Australia does not have bilateral treaties: New Zealand, Papua New Guinea, Vanuatu, Singapore and extending the scope of the application of the Act to the United Kingdom and to the following foreign countries - Germany, Japan and the USA.

Mutual Assistance in Criminal Matters (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 1992

Barbados Mutual Assistance in Criminal Matters Act 1992

British Virgin Islands Mutual Legal Assistance (USA) Act 1990

New Zealand Mutual Assistance in Criminal Matters (Prescribed Foreign Country) (United Kingdom) Regulations 1993

EXTRADITION

Australia Extradition Amendment Act 1990

Belize Exchange of Offenders (Belize/Mexico) Act 1987

New Zealand The Fugitive Offenders (Protected States) Act 1915 (UK) as in force in New Zealand

Sri Lanka South Asian Association for Regional Co-operation Regional Convention on Suppression of Terrorism Act, No. 70 1988

St Lucia Extradition Act 1986

Tonga Extradition (Designated Countries) Order

Trinidad & Tobago Extradition (Commonwealth and Foreign Territories) Act 1985

Zimbabwe Extradition (Designated Country) (United Kingdom) Order 1991